



# Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty

Standards, Approaches and Examples from the OSCE Region

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# Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty

Standards, Approaches and Examples from the OSCE Region



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# Foreword

Complying with human rights standards in places of deprivation of liberty is key to both the safety of individuals within them as well as to the security of the society outside. The OSCE comprehensive concept of security provides a framework for understanding how human rights violations are linked to security.

Understanding sexual violence as a form of gender based violence and, thus, grasping the interplay of power and discrimination may help in the development of preventive measures that are fully inclusive of the motivations behind such violence.

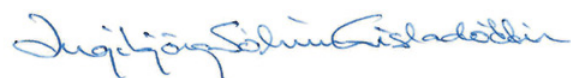
This publication highlights the root causes of sexual and gender-based violence in places of deprivation of liberty and the reasons why the problem is so rarely acknowledged and so often ignored or tolerated.

This publication provides examples from around the OSCE region that show how states can address and prevent sexual and gender-based violence in places of deprivation of liberty.

vation of liberty, while upholding human rights and integrating a gender perspective. It also provides case-law examples illustrating milestones in jurisprudence on the topic. In addition to an account of landmark court decisions, international instruments, national practices and academic studies, this publication is based on research collected over two years involving practitioners from criminal justice systems and civil society organizations throughout the region.

Overall, the publication aims to raise awareness about sexual and gender-based violence in criminal justice facilities and about victims' needs, while proposing a range of safeguards that can be put in place to effectively prevent such violence.

As sexual and gender-based violence in places of deprivation of liberty is largely under-researched, the aim of this publication is to trigger a debate and inspire further action at the national and international levels. In this way, it will fill a gap in the existing tools dedicated to places of deprivation of liberty.



**Ingibjörg Sólrún Gísladóttir**  
Director of the OSCE Office for Democratic Institutions and Human Rights



# Acronyms and Abbreviations

<b>APT</b>	Association for the Prevention of Torture
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CCTV</b>	Closed-circuit television
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CPT</b>	European Committee for the Prevention of Torture
<b>CSO</b>	Civil society organization
<b>ECHR</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms
<b>EU</b>	European Union
<b>ICRC</b>	International Committee of the Red Cross
<b>GBV</b>	Gender-based violence
<b>LGBTI</b>	Lesbian, gay, bisexual and transgender, and/or intersex
<b>NGO</b>	Non-governmental organization
<b>NHRI</b>	National human rights institution
<b>NPM</b>	National preventive mechanism
<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>OPCAT</b>	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>PRI</b>	Penal Reform International
<b>SGBV</b>	Sexual and gender-based violence
<b>SMR</b>	Standard Minimum Rules for the Treatment of Prisoners; “revised SMR” refers to the updated version (2015) as a synonym for Nelson Mandela Rules or Mandela Rules
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>WHO</b>	World Health Organization

# 1. INTRODUCTION

# 1. INTRODUCTION

Those who are deprived of their liberty are some of the least visible people in the world. These individuals can be permanently affected by their experiences in justice institutions and those experiences can extend far beyond prison walls.

Detainees and prisoners can be at risk of violence if protection measures are not put in place or consistently applied. Women may be subjected to violence and abuse in closed and male-dominated environments, reflecting the prevalence of gender inequality existing in the broad community, which causes discrimination and victimization from sexual and gender based violence. Men may be expected to align to stereotypical forms of masculinity, which are typically about power and dominance. If they do not conform or if they are perceived as having breached codes of honour, they are and can be at risk of violence and abuse.

Talking about sexual and gender-based violence in places of deprivation of liberty continues to be a taboo in many countries, as much as it is a reality. While sexual violence is under-reported in all settings, similarly to conflict-related sexual violence, the realities and the experiences of those who have suffered are hidden because of, among other things, a culture of silence and acceptance of violence as “collateral damage”, the lack of appropriate protection measures, power imbalances, fear of further punishment and the overarching stigma attached to such violence.

Understanding sexual violence as a form of gender based violence and, thus, grasping the interplay of power and discrimination may help in the development of preventive measures that are fully inclusive of the motivations behind such violence.

Sexual and gender-based violence (SGBV) represents an extreme form of discrimination and a serious human rights violation that may affect a number of human rights, including the right to life, liberty and security of the person, and the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment. Acts of SGBV threaten the health, dignity, security and autonomy of victims but remain largely ignored and under-reported, particularly when they occur far from the public eye.

## 1. INTRODUCTION

SGBV is a persistent problem in places of deprivation of liberty<sup>1</sup> across the OSCE region. This reflects not only the extent to which society tolerates such violence, but also the fact that prisons and detention facilities often fail in their duty to protect detainees and prisoners. If facilities are not properly managed, perpetrators may be able to act with impunity, and victims may have no choice but to suffer in silence.

Despite this, limited attention has been devoted to understanding the nature and extent of this form of violence in the OSCE region or to the most effective responses and prevention measures. Similarly, little effort has been made by states to protect those most vulnerable to SGBV or to deal with the consequences for victims, perpetrators and society as a whole.

Preventing and responding to SGBV in places of deprivation of liberty is first and foremost a state responsibility. State authorities are responsible for ensuring that all detainees or prisoners, staff, service providers and visitors are not discriminated against and are safe and protected against violence at all times. However, as this publication demonstrates, many non-state actors and individuals, including detainees and prisoners themselves, can also play an important role in addressing SGBV.

Integrating a gender perspective in detention does not only help to prevent violence, but is an essential measure to protect the human rights of all detainees from admission to release. Addressing men's needs in prison in relation to the gendered pathways which lead to their incarceration will also foster a better understanding of how narrow and aggressive masculinities may be conducive to violence in deprivation of liberty and in the broader community. Similarly, taking into account women's disproportionate victimisation from gender-based violence and discrimination prior to imprisonment will be crucial to their effective rehabilitation and to the prevention of violence within closed facilities.

Assessing the differential impact of security measures in detention on men and women, boys and girls, including individuals of diverse gender identity and sexual orientation, will help create humane, safe and orderly facilities that maximize the chances of successful rehabilitation.

While SGBV is a complex and nuanced topic, this publication focuses on the two most prevalent forms of SGBV:

1. Violence perpetrated by detainees/prisoners against other detainees/prisoners (inter-prisoner violence); and
2. Violence perpetrated by staff against detainees/prisoners.

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1 This publication uses the term "places of deprivation of liberty" to indicate any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority as per definition provided by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4 (2).

## 1. INTRODUCTION

Reference is also made to instances of SGBV perpetrated by detainees/prisoners against staff members and between staff members to highlight the general culture of gender discrimination and inequality that fosters violence within places of deprivation of liberty.

This publication is based on desk research and an analysis of practices and policies in the OSCE region, consultations with experts from the criminal justice system and practitioners and two country visits (Georgia and Norway).<sup>2</sup>

Data was also collected from answers to a questionnaire on sexual and gender-based violence in prisons and detention facilities provided by 27 OSCE participating States.<sup>3</sup> Information about country practices was provided by a panel of expert-practitioners from the security sector, national human rights institutions and civil society from 14 OSCE participating States who gathered at a dedicated meeting in October 2016.<sup>4</sup> Several experts provided comments on drafts of this publication, including participants of a peer review meeting held in December 2016.

### Relevant OSCE commitments:

- ▶ Equal rights of women and men and gender equality.<sup>5</sup>
- ▶ Preventing and Combatting Violence Against Women.<sup>6</sup>
- ▶ Prevention of gender-based persecution, violence and exploitation.<sup>7</sup>
- ▶ Prohibition of torture and other cruel, inhuman and degrading treatment or punishment.<sup>8</sup>
- ▶ Treatment of persons deprived of their liberty.<sup>9</sup>

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2 While some of the publications cited are several decades old, they should not be seen as outdated; they still provide guidance on this issue that has not been surpassed by more recent studies.

3 Albania, Belarus, Belgium, Bosnia and Herzegovina, Canada, Croatia, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Italy, Latvia, Lithuania, Malta, North Macedonia, Poland, Romania, Russia, Serbia, Spain, Sweden, Switzerland, Turkey, Ukraine and Uzbekistan.

4 Albania, Canada, Croatia, Italy, Kazakhstan, Latvia, Poland, Russia, Serbia, Spain, Sweden, United Kingdom, United States and Ukraine.

5 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991 (Moscow 1991); Istanbul Document, Istanbul, 19 November 1999 (Istanbul 1999); and Final Document of the Twelfth Meeting of the Ministerial Council, Sofia, 6-7 December 2004 (Sophia 2004).

6 Ministerial Council Decision No. 15/05 Preventing and Combating Violence Against Women (Ljubljana 2005); Ministerial Council Decision No. 7/14 Preventing and Combating Violence Against Women (Basel 2014); Ministerial Council Decision No. 4/18 Preventing and Combating Violence Against Women (Milan 2018).

7 Moscow 1991; Istanbul 1999; Sophia 2004 and Final Document of the Thirteenth Meeting of the Ministerial Council, Ljubljana, 5 and 6 December 2005 (Ljubljana 2005).

8 Concluding Document of Vienna – The Third Follow-up Meeting, Vienna, 15 January 1989 (Vienna 1989); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990 (Copenhagen 1990); Charter of Paris for a New Europe/Supplementary Document to give effect to certain provisions contained in the Charter of Paris for a New Europe, Paris, 21 November 1990 (Paris 1990); Moscow 1991; Concluding Document of Budapest, 6 December 1994 (Budapest 1994); Istanbul 1999; Ljubljana 2005; Document of the Sixteenth Meeting of the Ministerial Council, Helsinki, 4-5 December 2008 (Helsinki 2008); Document of the Seventeenth Meeting of the Ministerial Council, Athens, 1-2 December 2009 (Athens 2009).

9 Vienna 1989 and Moscow 1991.

### 1.1. Purpose and audience

The purpose of this publication is to improve the understanding of SGBV on the part of state actors and civil society, including an understanding of how such violence manifests in places of deprivation of liberty. It also identifies many of the factors that increase the vulnerability of persons deprived of their liberty and aims to contribute to the reduction and eventual elimination of SGBV in places of deprivation of liberty.

This publication has four key objectives:

1. To shed light on the causes, dynamics and consequences of SGBV in places of detention;
2. To identify the principles that should underpin effective approaches to preventing SGBV in places of detention;
3. To provide examples of initiatives and approaches used in the OSCE region, as well as case studies illustrating both positive and negative practices; and
4. To encourage participating States to undertake reforms so their practices are in line with OSCE commitments and international human rights standards.

The publication is primarily intended for policymakers, lawmakers and practitioners from criminal justice systems, including lawyers, prosecutors, judges and anyone else involved in arresting, investigating, interrogating or detaining suspects, those accused of a crime and prisoners or detainees.

A comprehensive approach is needed for OSCE participating States to effectively prevent and address SGBV in places of deprivation of liberty. This requires engagement with stakeholders both within and outside the justice system. As such, ODIHR hopes that this publication will also be a useful resource for a range of readers, including national preventive mechanisms (NPMs), national human rights institutions (NHRIs), international organizations and civil society organizations, including human rights organizations and prisoners' organizations, particularly those working with individuals who have recently been released from prison.

Examples of initiatives from OSCE participating States are included in the publication to illustrate different approaches to tackling SGBV in places of deprivation of liberty. The selection was based on assessments provided in response to ODIHR's questionnaire that suggested they had been effective in a given country. However, these practices have not been independently evaluated by ODIHR.

Because detention policies and practices vary considerably between countries, national practices should not be compared directly with one another. Not all policies can be easily replicated in other countries, but all examples provided can be adjusted to fit different country contexts. These examples provide lawmakers and prison staff with ideas about how to integrate a gender perspective into their respective domains to counter SGBV.

The publication also provides examples of cases of SGBV in the OSCE region through an account of key decisions of the European Court for Human Rights.

### 1.2. Scope and use of terms

The United Nations (UN) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>10</sup> defines deprivation of liberty as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”.<sup>11</sup> SGBV can occur in any place of deprivation of liberty, including police stations, prisons, immigration and refugee detention centres, drug and alcohol rehabilitation centres, military detention facilities and psychiatric and other medical facilities. This publication focuses specifically on criminal justice institutions; however, many of the findings are relevant to other places of deprivation of liberty.

Even when not in formal custody, there can be periods of time in which authorities *de facto* detain individuals as suspects or witnesses and subject them to SGBV. As the UN Special Rapporteur on violence against women, its causes and consequences has noted, “In many cases, the fact of custody may be obscured.” For example, in countries where the rule of law is weak, citizens may be targeted in places beyond police stations and prisons.<sup>12</sup>

Places of deprivation of liberty, used as an umbrella term in this publication, vary greatly from jurisdiction to jurisdiction. Due to differing terminology and criminal justice structures among participating States, this publication uses several terms to describe the arrangements under which individuals are detained within the criminal justice system. When citing other sources directly, however, the terminology in the original text is used.

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**Police custody** refers to detention by law enforcement agencies, typically after arrest, but also during any interactions with police when SGBV can occur. This can be at any point of arrest, when suspects are being trans-

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10 At the time of publication, 41 OSCE participating States had ratified the OPCAT: Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Kazakhstan, Kyrgyzstan, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Mongolia, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom. The following states have signed but not ratified the protocol: Belgium, Iceland and Ireland.

11 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199, entered into force on 22 June 2006, Article 4 (2), <<https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>>.

12 Report of the Special Rapporteur on violence against women, its causes and consequences, 26 January 1998, E/CN.4/1998/54, para. 126, <<https://www.refworld.org/docid/3b00efbd24.html>>.

## 1. INTRODUCTION

ported, questioned as witnesses or interrogated, whether or not a formal arrest has been made.

**Pre-trial detention** refers to a judicial decision to detain an individual accused of a crime during a criminal investigation, trial or before sentencing.

**Detainee/detained person** refers to any person who has been deprived of their liberty except as a result of a conviction for an offence.

**Imprisonment/prison** refers to the deprivation of liberty of a person who has been convicted and sentenced for a particular offence.

**Prisoner/imprisoned person/inmate** refers to a person who has been deprived of their liberty as a result of conviction for an offence.<sup>13</sup>

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While acknowledging and highlighting the particular vulnerability of juveniles in places of deprivation of liberty, this publication does not offer specific guidance on the treatment of juvenile detainees or prisoners. This is because the particular needs of children and young people are best approached in dedicated juvenile justice systems, which fall beyond the scope of this publication. However, the publication does highlight some of the factors that would place juvenile detainees at risk of SGBV.

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<sup>13</sup> See chapter 8 in *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (New York and Geneva: United Nations, 2003), <<https://www.ohchr.org/Documents/Publications/training9chapter8en.pdf>>.





## 2. CORE CONCEPTS



## 2. CORE CONCEPTS

SGBV is a multifaceted problem, and the basic concepts and approaches to the problem are themselves complex. Practitioners and readers may have differing understandings or perceptions of the problem, given that there is variation in how SGBV, both in places of deprivation of liberty and in the community, is treated under domestic criminal laws.

Despite differing legal regimes, all states have the same obligation under international law and their OSCE commitments to prevent and respond to any instances of SGBV. This section explores several important concepts relating to SGBV and introduces relevant concepts in international human rights law.

### 2.1. Gender-based violence, inequality and discrimination

The term Gender Based Violence (GBV) was used for the first time to describe the intersections of violence against women and gender-based discrimination and defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately.”<sup>14</sup>

GBV has since come to be used to refer to violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering, against someone based on gender discrimination, gender role expectations and/or gender stereotypes, or based on the differential power status linked to gender.<sup>15</sup>

GBV is the result of structural, deep-rooted discrimination that the state has an obligation to address. GBV is also rooted in gender norms regarding masculinity, including the need to assert control or power, enforce roles or prevent, discourage or punish behaviour considered unacceptable because it does not conform to socially constructed norms.

GBV is conceptualized not only as a human rights violation in its own right, but it is also an extreme form of discrimination covered within the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It impairs or nullifies the enjoyment of other human rights and fundamental freedoms, including the rights not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, to security of the person and to equal protection under the law.<sup>16</sup>

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14 Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 on Violence against women, 1992, para. 6, <<https://www.refworld.org/docid/52d920c54.html>>.

15 UN Women, Virtual Knowledge Centre to End Violence Against Women and Girls, <<http://www.endvawnow.org/en/articles/347-glossary-of-terms-from-programming-essentials-and-monitoring-and-evaluation-sections.html>>.

16 *Ibid*, para. 7.

## 2. CORE CONCEPTS

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Gender norms are the standards and expectations to which gender identity generally conforms, within a range that defines a particular society, culture and community at that point in time.

Source: UNICEF, UNFPA, UNDP, UN Women. "[Gender Equality, UN Coherence and You](#)".

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The international community, particularly international organizations, has made considerable progress in deepening the definition of what forms GBV can take, its causes and the factors that make individuals vulnerable to it, as well as the responsibilities of states with regard to it. One of the key developments in the field has been a growing understanding within the international community of GBV as different from other forms of interpersonal violence because it both stems from and perpetuates discrimination.

GBV has its roots in power inequalities that are gender-based, with victims, either female or male, individuals or groups, targeted due to their gender.<sup>17</sup>

In 2018, the OSCE Ministerial Council further stressed that women and girls may suffer many different kinds of discrimination, sometimes in combination, which exposes them to increased risk of violence, and that such combinations can lead to further discrimination.

### **Case law example: *Ingrid Abramova vs. Belarus* (Optional Protocol to CEDAW, 2011)**



Ingrid Abramova was arrested on charges of minor hooliganism when engaged in campaigning activities. She was placed in a temporary detention facility and held under administrative arrest for five days. She alleged various forms of ill-treatment during her detention, including being held in a facility staffed entirely by men who made frequent humiliating comments about her. She also alleged that during her detention a male staff member subjected her to a body search and touched her inappropriately and another male staff member threatened to strip her naked at the same time.

The applicant maintained that “her conditions of detention were worse than those of male prisoners, since she was the object of sexual harassment and was subjected to degrading treatment by male personnel”.<sup>18</sup>

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17 *Mending Inequalities: Men and Gender Equality in the OSCE Region* (Vienna: OSCE, 2011), <<https://www.osce.org/gender/80978?download=true>>.

18 Views of the UN Committee on the Elimination of Discrimination Against Women, Communication No. 23/2009, 27 September 2011, para. 3.3.

## 2. CORE CONCEPTS

The Committee found that her treatment, as well as the lack of attention to the special needs of female detainees, amounted to both a form of gender-based violence and discrimination within the scope of CEDAW.

In the community at large, GBV disproportionately affects women because they are women, as well as girls. This is linked to prejudice and discrimination, gender inequality in societies, harmful gender stereotypes and gender-based power differences. However, in some highly masculinized environments, such as in places of deprivation of liberty, GBV is also used against men and boys as a means of humiliating, degrading and controlling them. Men who are perceived not to conform to society's dominant view of masculinity due to their actual or assumed sexual identity or sexual orientation may also be victims of GBV in places of deprivation of liberty, as in the wider community. Transgender and intersex people in detention can also be targeted for not conforming to society's dominant view of femininity or masculinity.

Inequality is both a root cause and a consequence of GBV because it can prevent victims from seeking protection or redress for violations of their human rights. Promoting gender equality and protecting the human rights of individuals in places of deprivation of liberty is therefore crucial to preventing GBV.

### 2004 OSCE Gender Action Plan for the Promotion of Gender equality:

- ▶ Effective gender-mainstreaming with the goal of achieving gender equality, is important if full use is to be made of the human capital in the OSCE area. Gender equality contributes to comprehensive security, which is a goal of OSCE activities in all three dimensions.

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### Key characteristics of GBV:

- \* It is rooted in social expectations based on gender (gender stereotypes);
  - \* It is often perpetrated against individuals who are perceived not to conform to society's accepted and dominant understanding of gender roles;
  - \* It is the result of gendered power inequities that exploit distinctions between males and females, among males, and among females; and
  - \* It is driven by a desire to assert control or power.
-

## 2. CORE CONCEPTS

One of the most significant advances in addressing GBV is the application of the due diligence standard, which was first laid out in Article 4(c) of the UN Declaration on the Elimination of Violence against Women in 1993. The due diligence standard challenged states' historical inaction to address GBV by bestowing upon them a duty to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women".<sup>19</sup> International law and jurisprudence have defined what is required of states in this regard. Beyond preventing, investigating and punishing all acts of GBV, including in places of deprivation of liberty, states must ensure that they do so regardless of whether they are perpetrated by state actors, such as police and prison authorities, private individuals or other detainees/prisoners.<sup>20</sup>

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### Core principles for GBV interventions:

- \* States must take a human rights-centred and gender-sensitive approach to GBV, recognizing that gender inequality is both a cause and consequence of GBV;
- \* States must take measures to prevent GBV, protect victims, investigate acts of GBV and prosecute perpetrators;
- \* States must end impunity by holding perpetrators accountable and taking a zero-tolerance approach to GBV;
- \* The experiences of survivors of GBV should be considered when developing justice system interventions;
- \* Measures to address GBV should be comprehensive and co-ordinated, involving multiple agencies working towards the same goal of eradicating this form of violence; and
- \* The human rights, needs and safety of victims/survivors should be priorities (often referred to as taking a victim/survivor-centred approach).

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## 2.2. Sexual and gender-based violence (SGBV)

► **MOSCOW 1991:** The participating States will treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person and will respect the internationally recognized standards that relate to the administration of justice and the human rights of detainees.

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19 See the UN Declaration on the Elimination of Violence against Women, 20 December 1993, para. 4(c), <<https://www.un.org/documents/ga/res/48/a48r104.htm>>.

20 *Ibid.*

## 2. CORE CONCEPTS

### Key recommendation

- ✓ Sexual and gender-based violence should be clearly defined and criminalized in domestic legislation.

“Sexual violence is a form of gender-based violence and encompasses any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.”<sup>21</sup> Sexual violence is an inherently gendered crime because it largely stems from gender inequality and gender stereotypes, such as the notions that women should be sexually submissive and that sexual aggression and domination are core components of manhood and masculinity.

The term SGBV is, thus, important because it acknowledges the dual aspect of the violence as both sexual and a form of discrimination on the grounds of gender, sexual orientation or identity.

While many places of deprivation of liberty have systems in place to identify and respond to sexual violence, they may not always recognize its gender dimensions when it occurs. Therefore, the term SGBV is useful to draw attention to both the sexual and gender component of this form of violence.

Sexual activity between or among individuals in places of deprivation of liberty is often prohibited and remains a taboo subject. Most facilities impose clear prohibitions on both consensual and non-consensual physical contact and sexual behaviour, which can extend to masturbation. Detainees or prisoners may, therefore, be reprimanded or disciplined for partaking in consensual sexual acts.

The lack of clear definitions about what constitutes SGBV in places of deprivation of liberty, the lack of a clear policy for responding to SGBV and inadequate staff training to identify SGBV can lead to situations in which the line between the expression of sexuality and abuse is blurred. When individuals are deprived of their liberty, genuine consent can be difficult to determine. Therefore, it is reasonable to assume that many acts of a sexual nature in conditions of deprivation of liberty could constitute sexual violence.

Despite the efforts of many criminal justice facilities to provide humane conditions for detainees, prisons and detention facilities are inherently coercive environments in which one group of people, the staff, are vested with the power to oversee and con-

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21 “Sexual and gender-based violence in the context of transitional justice”, UN Office of the High Commissioner for Human Rights, October 2014, <[https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Sexual\\_and\\_gender-based\\_violence.pdf](https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Sexual_and_gender-based_violence.pdf)>.

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tain another set of individuals, the detainees and prisoners. The degree of autonomy possessed by detainees is limited vis-à-vis a high degree of dependence on staff and each other.<sup>22</sup>

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**Sexual and gender-based violence, may consist of the following types of violence and abuse:** including rape and attempted rape, sexual threats, sexual harassment, exploitation, humiliation, assault, molestation, sexual bartering<sup>23</sup>, torture and unwanted or noxious insertion of objects into genital openings. It can also encompass forced pregnancy, forced sterilization, forced abortion, trafficking for sexual exploitation, sexual enslavement, forced circumcision, castration and forced nudity.

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While this publication takes a close look at the problem of SGBV in isolation, in practice, various forms of violence in places of deprivation of liberty are interconnected and can occur in conjunction with SGBV. For example, non-gendered physical violence between detainees or prisoners can accompany acts characterized as SGBV. While it is somewhat artificial to separate violent acts in this way, SGBV should be separately identified because it warrants special treatment, with particular attention paid to the gender dimension.

### 2.2.1. Forms of sexual and gender-based violence in places of deprivation of liberty

The range of abuses include some of the most serious human rights violations, such as rape and sexual abuse, as well as other gender-based and/or sexually exploitative and humiliating acts that can take place in settings where there are imbalances of power, such as prisons and detention facilities.

How an act of SGBV is defined depends on its treatment under domestic law. For instance, some states define rape in a gender-neutral manner, and penetration does not have to take place for abuse to be classified as sexual violence. In other countries, domestic criminal law limits rape to acts of penetration committed by males against females.

An act of violence may be characterized differently depending on the relationship of the perpetrator with the victim (whether staff or detainee/prisoner) and the sex of

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22 *Sexual Violence in Detention* (Geneva: ICRC, 2017), <<https://www.icrc.org/en/publication/4293-sexual-violence-detention>>.

23 Sexual bartering is a *quid pro quo* relationship in which sexual favours are exchanged for goods (e.g., drugs, cigarettes) and/or services (e.g., special work detail or cell assignment) built on unequal or differential power among prisoners or between incarcerates and correctional employees. See Pardue, A., Arrigo, B. A., & Murphy, D. S. (2011). Sex and Sexuality in Women's Prisons: A Preliminary Typological Investigation. *The Prison Journal*, 91(3), 279–304. <<https://doi.org/10.1177/0032885511409869>>.



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the perpetrator and the victim. Some definitions of various terms related to SGBV are outlined below.

It is important to note that the forms of violence described below are not mutually exclusive, meaning that an act of SGBV can be characterized in multiple ways.

### ***Sexual violence***

The International Committee of the Red Cross states that: “Sexual violence refers to acts of a sexual nature committed by any person against another by coercion. Coercion can be caused by circumstances such as the fear of violence, duress, force, threat of force, psychological oppression or abuse of power. Sexual violence also comprises acts of a sexual nature committed by taking advantage of a coercive environment or a person’s incapacity to give genuine consent.”<sup>24</sup>

### ***Rape and threats of rape***

Rape is an invasion of the body of a person “by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body”.<sup>25</sup> It includes an element of force, threat of force or coercion. Note that situations of detention and abuse of power may be sufficient on their own to meet the element of coercion.

### ***Sexual assault***

Sexual assault is an act of physical or sexual violence against a person that occurs without the consent of the person and is a violation of a person’s bodily integrity and sexual autonomy. Both men and women can be victims and perpetrators of sexual assault.<sup>26</sup>

### ***Criminal sexual contact***

Criminal sexual contact is used to describe contact or sexual touching that does not involve elements of rape or sexual assault but that “nonetheless constitutes a breach of official duty” in prisons and detention facilities (here, referring to acts perpetrated by a prison staff member).<sup>27</sup> Acts of criminal sexual contact include improper contact with the victim’s private parts, including the genitalia, anus, buttocks, groin, breasts or thighs.

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24 *Sexual Violence in Detention, op. cit.*, note 22.

25 This is an expansive definition of rape developed under international law. Explanatory note to the Rome Statute, Elements of the crime of rape, Article 7 (1) (g)-1.

26 “Definition of sexual assault and other elements”, UN Women Virtual Knowledge Centre to End Violence Against Women and Girls, <<http://www.endvawnow.org/en/articles/453-definition-of-sexual-assault-and-other-elements.html>>.

27 Niyi Awofeso and Raymond Naoum, “Sex in prisons – a management guide”, Australian Health Review, Vol. 25, No. 4, 2002, p. 155.

### ***Sexualized torture***

Sexual violence involving the intentional infliction of severe pain or suffering — mental or physical — on an individual to obtain information or a confession; for punishment, intimidation or coercion; or for any reason based on discrimination of any kind falls within the definition of torture under international humanitarian law and international human rights law. Acts of torture and ill-treatment can be intentionally sexualized in a deliberate attempt to further shame or humiliate the victim based on their identity or background. Without the purposive element, sexual violence may still be classified as cruel, inhuman or degrading treatment or punishment. It can include rape used as a form of torture, ill-treatment or punishment, as well as other forms of sexual assault and humiliation used for the same purposes.<sup>28</sup> Acts of sexualized torture include, among other things, rape and threats of rape; sodomy with foreign objects; being stripped naked; the application of electrical current to the genitals, buttocks or breasts; and insults and humiliation of a sexual nature.

### ***Sexual humiliation and sexual misconduct***

Sexual humiliation and sexual misconduct include acts that are humiliating, harassing and exploitative and acts that can constitute sexual misconduct when perpetrated by law enforcement or prison authorities. Acts include forced nudity, inappropriate staff behaviour during searches and unnecessarily invasive body searches.

In some states, female prisoners undergoing searches are “required to undress in public, to squat and to undergo intimate body searches, including invasive probing of the vagina and anus”.<sup>29</sup> According to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, these types of inspections “can constitute sexual violence and must therefore be prohibited”.<sup>30</sup>

Other forms of sexual humiliation include undue and sexualized monitoring or voyeurism of prisoners while bathing or in toilets, insults of a sexual nature, and obscene comments or sexualized gestures, such as whistling or leering by staff or other detainees/prisoners.

### ***Humiliation and harassment based on sexual orientation or gender identity***

Humiliation and harassment based on sexual orientation or gender identity include abusive behaviour targeting individuals of diverse sexual orientations and/or gender identities and expression. Staff may be complicit in such harassment, e.g., when conducting unnecessarily invasive body searches or non-consensual examinations. They may also become complicit by failing to respond when such violence is perpetrated by other detainees/prisoners.

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28 *Sexual Violence in Detention, op. cit.*, note 22.

29 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “Prevention of torture and ill-treatment of women deprived of their liberty”, 18 January 2016, CAT/OP/27/1, para. 27.

30 *Ibid.*

### 2.3. Other forms of SGBV

There are other forms of sex-specific violence that target only women or only men. These include, for example, forcing women to continue pregnancies or to have abortions while in custody, as well as “virginity testing.”

Virginity tests of female detainees and prisoners can be used as a tactic to humiliate and terrorize women, rather than for any forensic purpose. The procedure has been defended as a means of detecting custodial rape, when women are tested when entering and leaving prison, or as part of a police investigation into prostitution. Sterilization of female<sup>31</sup> and male<sup>32</sup> prisoners may also constitute SGBV if it is non-consensual or coerced.<sup>33</sup>

Another specific kind of SGBV is related to illegal drug use in some prison settings. A study of female perpetrators of rape against female inmates in the United Kingdom’s prison system found that most such acts were drug-related. Specifically, the rapist would forcibly try to extract concealed contraband narcotics from body orifices (known as “plugging” or “crutching”). Most rape and bullying began soon after visiting periods.<sup>34</sup> Academics have noted that “[t]hese acts blur the distinction between rape and bullying in women’s prisons” based on the assumption that “because of the same-sex nature of most prisons, heterosexual rape is very uncommon among prison inmates”.<sup>35</sup>

#### 2.3.1. Workplace sexual harassment

It can include physical, verbal and non-verbal conduct. It is important that places of deprivation of liberty have in place zero-tolerance policies towards sexual harassment targeting staff because situations of impunity perpetuate gender discrimination and inequality, which are root causes of SGBV. Personnel in prisons and detention facilities have a duty to ensure safe working conditions for staff, ensure there are adequate reporting mechanisms and that disciplinary measures are followed.

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31 Non-consensual sterilization of female prisoners has been documented in a number of countries, including in the United States. Note that after research was published on the practice of sterilizing female prisoners by the California Department of Corrections and Rehabilitation, the state passed legislation outlawing the practice in 2014.

32 In the context of country visits to Germany (2010, 2013), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment expressed concern that the practice of surgical castration of convicted sex offenders could be considered degrading treatment.

33 The Council of Europe acknowledges that the practice of forced castration or sterilization is very rare among member states, but, nevertheless, in reference to surgical castration of prisoners it notes, that determining consent can be problematic given that the individual may believe that the procedure is “the only available option open to them to avoid indefinite confinement”. See “Putting an End to Coerced Sterilisations and Castrations”, Committee on Social Affairs, Health and Sustainable Development, Council of Europe Parliamentary Assembly, 26 June 2013, p. 10.

34 Awofeso and Naoum, *op. cit.*, note 27, p. 156.

35 *Ibid.*

### 2.4. SGBV and torture and other cruel, inhuman or degrading treatment or punishment

The absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is a *jus cogens* norm and a fundamental principle of international law.<sup>36</sup> The UN Convention against Torture (CAT) includes the following definition of torture:

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**Torture** is “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>37</sup>

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All 57 OSCE participating States have ratified the UN Convention against torture and have committed to implement the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.<sup>38</sup>

States are obliged to prevent acts of torture as well as acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture as defined by the CAT, including when such acts are committed by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.<sup>39</sup>

As the definitional boundaries between torture and other cruel, inhuman or degrading treatment often require an in-depth case-by-case analysis,<sup>40</sup> the term “torture and other ill-treatment” is used throughout this publication to refer to torture and other cruel, inhuman or degrading treatment. The definition of torture and other ill-treatment can also apply to acts perpetrated by states, public officials or those acting in a public capacity, as well as to non-state actors if the state has failed to take effective measures, including legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

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36 Article 7 of the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 3 of the European Convention on Human Rights.

37 CAT, Article 1.

38 Relevant OSCE Commitments were adopted in Vienna 1989, Copenhagen 1990, Moscow 1991, Istanbul 1999, Ljubljana 2005, Helsinki 2008, Athens 2009

39 CAT, Article 16.

40 The Definition of Torture, Proceedings of an Expert Seminar, (Geneva: APT, November 2001) <[https://www.apt.ch/content/files\\_res/Definition%20of%20Torture\\_Seminar\\_EN.pdf](https://www.apt.ch/content/files_res/Definition%20of%20Torture_Seminar_EN.pdf)>.

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UN Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment have stated that sexual and gender-based violence in detention facilities can amount to torture in some circumstances. In 1986, Peter Kooijmans the UN Special Rapporteur on torture, concluded that rape in prison should be regarded as torture. This opened the door to discussion and codification of norms on a subject previously ignored.<sup>41</sup> The UN Special Rapporteur recognized that rape was one of a long list of techniques constituting torture that are used against detainees.<sup>42</sup>

In his January 2008 report, UN Special Rapporteur Manfred Nowak stressed that custodial violence against women very often includes rape and other forms of sexual violence, such as threats of rape, touching, “virginity testing”, being stripped naked, invasive body searches, insults and humiliation of a sexual nature. It is widely recognized, including by former Special Rapporteurs on torture and by regional jurisprudence, that rape constitutes torture when it is carried out by, or at the instigation of, or with the consent or acquiescence of, public officials.<sup>43</sup>

### Key recommendation

- ✓ Whenever appropriate, judicial authorities should consider intersections with torture when listening to the testimonies of victims, witnesses and defendants. In addition, they should consider whether serious incidents of SGBV, including rape cases, should be prosecuted as forms of torture or other ill treatment. Such decisions should be made on a case-by-case basis and according to the wishes of the victim.

In international criminal law, the decisions of the International Criminal Tribunal for the former Yugoslavia in the *Celebici* and *Furundzija* cases have contributed to the international recognition of rape as a form of torture and international criminal tribunals, in their jurisprudence, have broadened the scope of crimes of sexual violence that can be prosecuted as rape to include oral sex and vaginal or anal penetration through the use of objects or any part of the aggressor’s body.<sup>44</sup> In addition: “when Government officials use rape, the suffering inflicted might go beyond the suffering caused by classic torture, partly because of the intended and often resulting isolation of the survivor. In some cultures a rape victim may be rejected or formally banished

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41 Felice D. Gaer, “Rape as a Form of Torture: The Experience of the Committee Against Torture”, 15 *CUNY Law Review*, Vol. 15, No. 2, 2012, pp. 293-308, <<http://academicworks.cuny.edu/clr/vol15/iss2/14>>.

42 See Special Rapporteur on torture, Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Peter Kooijmans, Comment on Human Rights, U.N. Doc. E/CN.4/ 1986/15, ¶ 119 (1986) [hereinafter Kooijmans, Report on Torture].

43 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008, para. 34, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement>>.

44 *Ibid*, para. 35.

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from her community or family. This rejection greatly hinders the psychological recovery of the victim and often condemns her to destitution and extreme poverty.”<sup>45</sup>

In his report from January 2016, Special Rapporteur on torture Juan E. Méndez highlighted the correlation between sexual abuse and violence and torture in places of deprivation of liberty.<sup>46</sup> He stressed that “women are at particular risk of torture and ill-treatment during pre-trial detention because sexual abuse and violence may be used as a means of coercion and to extract confessions.”<sup>47</sup> Women in pre-trial detention facilities — which are typically not built or managed in a gender-sensitive manner — tend not to have access to specialized healthcare and educational or vocational training. They face a higher risk of sexual assault and violence when they are held in facilities with convicted offenders and men or are supervised by male guards.<sup>48</sup> According to the Committee against Torture, “the undue prolongation of the pre-trial stage of detention represents a form of cruel treatment, even if the victim is not detained.”<sup>49</sup> The Committee against Torture also states that: “Detention, often for prolonged periods, is sometimes used on the grounds of ‘protecting’ female victims of rape, honour-based violence and other abuses or to ensure that they will testify against the perpetrator in court. This practice further victimizes women, deters them from reporting rape and sexual abuse and can amount to torture or ill-treatment per se.”<sup>50</sup>

The Special Rapporteur also adds “torture presupposes a situation of powerlessness, whereby the victim is under the total control of another person.”<sup>51</sup> “Both men and women, and boys and girls, may be subject to violations [of the CAT] on the basis of their actual or perceived non-conformity with socially determined gender roles.”<sup>52</sup> The “purpose” and “intent” elements of the CAT definition are always met if an act of violence can be shown to be gender-specific or perpetrated against individuals “on the basis of their sex, gender identity, real or perceived sexual orientation or non-adherence to social norms around gender and sexuality”, meaning that the act is inherently discriminatory.<sup>53</sup>

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45 *Ibid*, para. 36.

46 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, <<https://www.refworld.org/docid/56c435714.html>>.

47 *Ibid*.

48 *Ibid*.

49 *Ibid*, para. 20.

50 *Ibid*, para. 24.

51 UN Special Rapporteur on Torture, A/63/175, para. 50.

52 UN Committee Against Torture, General Comment No. 2, Implementation of Article 2 by States parties 2008, CAT/C/GC/2, para. 21.

53 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 15 January 2008, A/HRC/7/3 and Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, A/HRC/31/57.

### Key recommendations

Existing interrogation methods and practices should be revised in order to prevent SGBV, including ensuring there are clear procedures for interrogation methods. The following elements should be taken into account:

- ✓ Anyone who is arrested should have prompt and confidential access to a lawyer, including during interrogation, and they should also be able to notify their family or other contact person about their arrest and whereabouts;
- ✓ Complete records of all interrogations should be maintained, including information about the identity of all those present; and
- ✓ All officials involved in interrogation should be properly trained in interviewing suspects, including in relation to the prohibition of SGBV.

The UNCAT definition of torture highlights four main purposive elements, including confession extraction, punishment, intimidation/coercion and discrimination. CEDAW describes GBV as a form of discrimination against women in its General Recommendation No. 19, and similarly a 2016 report by the Special Rapporteur on torture states that the purposive element is always fulfilled if the act is carried out on the basis of gender. In the case of pre-trial detention, it is also likely to have a coercive nature with the intention of extracting a confession or statement, so multiple purposes may be at play, all of which fulfil the requirements under the UNCAT definition of torture.

Integrating a gender perspective on torture and ill-treatment “is critical to ensuring that violations rooted in discriminatory social norms around gender and sexuality are fully recognized, addressed and remedied.”<sup>54</sup> While the CAT makes no explicit reference to sexual violence and is gender-neutral, it does convey the notion that torture may be motivated by discrimination of any kind.

The European Court of Human Rights has noted that a violation of the prohibition of torture or other ill-treatment “may occur where the purpose or intention of the state’s action or inaction was not to degrade, humiliate or punish the victim, but where this nevertheless was the result.”<sup>55</sup> The UN Special Rapporteur on torture has stated, with regard to a gender-sensitive definition of torture, that “the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such vio-

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54 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, para. 6.

55 See *Peers v. Greece*, Application No. 28524/95 (2001), paras. 68, 74; *Groni v. Albania*, Application No. 25336/04 (2009), para. 125.

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lence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination.”<sup>56</sup>

Acts of SGBV committed in police custody, in pre-trial detention or in prison facilities may, therefore, constitute torture and other ill-treatment, whether perpetrated by state or non-state actors. States have a duty to protect prisoners from GBV and to prevent it. If state actors or others acting in an official capacity fail to put in place adequate safeguards to prevent GBV or they do not take action to investigate, punish and prosecute cases, then those officials also have to be considered complicit in the crime.”<sup>57</sup> If representatives of the state become aware of a pattern of violence in prison or have reason to believe that specific groups or individuals are being targeted, they must actively monitor, review and respond to the situation, lest they become complicit in the crime.

### Example of SGBV as torture



In March 2012, Sergey Nazarov died while in police custody, allegedly as a result of severe ill-treatment (including sexual violence) on the part of police officers at *Dalniy* Police Division No. 9 in Kazan (Republic of Tatarstan, Russian Federation).<sup>58</sup> After being hospitalized for abdominal pains and before slipping into a coma, Nazarov told relatives he had been beaten by four police officers and sodomized with a champagne bottle. Five officers were initially charged in Nazarov’s case in 2012. By 2014, eight former police officers in Tatarstan were convicted on charges of torturing suspects and imprisoned for terms ranging from two to 15 years.

In July 2018, after the Russian newspaper *Novaya Gazeta* published a video of a male inmate being brutally beaten, including in his genital area, federal investigators in Yaroslavl opened a criminal case under Article 286 of the Russian Criminal Code for abuse of authority using violence. The Russian human rights commissioner has also been involved in scrutinizing the case.

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56 UN Special Rapporteur on torture, A/HRC/7/3, para. 68.

57 UN Committee Against Torture, General Comment No. 2, Implementation of Article 2 by States parties 2008, CAT/C/GC/2.

58 Report to the Russian Government on the visit to the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 May to 4 June 2012, para. 18, <<http://hudoc.cpt.coe.int/eng?i=p-rus-20120521-en-7>>.



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The European Court of Human Rights held that the act of rape alone amounts to torture under Article 3 of the European Convention on Human Rights even if not accompanied by other forms of ill-treatment.<sup>59</sup>

### Case law example: *Mehmet Eren vs. Turkey*<sup>60</sup> (European Court of Human Rights, 2009)



The applicant alleged that he was subjected to various forms of ill-treatment while in police custody. Specifically, he was kept in a dark cell with insufficient ventilation, deprived of food and water and was prevented from going to the toilet. He was forced to stand, handcuffed, in the same position for many hours. During his interrogation, he was stripped naked, insulted and threatened with rape and death. The applicant was beaten on various parts of his body. In particular, he received repeated blows to his abdomen, his testicles were squeezed, and he was subjected to sexual abuse. Finally, he was forced to watch a female detainee being sexually abused. Substantively, the European Court of Human Rights found that the injuries were the result of the applicant's serious ill-treatment while he was in police custody, for which the state bore responsibility. Procedurally, the Court also concluded that the applicant's allegations of ill-treatment were not the subject of an effective investigation by the domestic authorities as required by Article 3 of the Convention. Therefore, there had been a violation of Article 3 of the European Convention on Human Rights.

Forced nudity may lead to torture because it places a prisoner or detainee in an inherently vulnerable position. According to the *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Istanbul Protocol), nudity enhances the psychological terror of every aspect of torture, as there is always the implicit risk of potential abuse, rape or sodomy.<sup>61</sup> Connected with this, groping can also be traumatic and may be considered under the rubric of "other ill-treatment."

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59 European Court of Human Rights, Judgment in the Case of *Aydin v. Turkey*, 25 September 1997, para. 86.

60 *Mehmet Eren v. Turkey*, Application No. 32347/02, <[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-88895%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-88895%22]})>.

61 *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (New York and Geneva: United Nations, 2004), <<http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>>.



### **Case law example: *Hellig v. Germany*<sup>62</sup> (European Court of Human Rights, 2011)**

Herbert Hellig was held in detention in Butzbach prison in a single cell. In October 2000, he was asked to move to a multi-occupant cell by the prison staff, but he refused, as he thought the conditions in the cell were not suitable to him. Because of his resistance, he was locked in a security cell for seven days; he was strip-searched and allegedly remained naked the whole time he was in the cell, reportedly to prevent him from harming himself. The applicant complained that he was beaten by prison guards while they were escorting him to the security cell, and he also challenged the lawfulness of his detention in the security cell with regard to the fact that he was forced to remain nude the entire time. Both claims were made under Article 3 of the European Convention on Human Rights. While the Court concluded that the threshold for inhuman treatment was not reached in respect of the applicant's treatment during his transfer to the security cell, it argued that depriving an inmate of clothing is capable of arousing feelings of fear, anguish and inferiority and capable of humiliating and degrading him. It was further observed that there was no indication that the prison authorities had considered the use of less intrusive means, such as providing the applicant with tear-proof clothing.

The government failed to submit sufficient reasons that could justify such harsh treatment as to deprive the applicant of his clothes during his entire stay. The Court ruled that the applicant had been subjected to inhuman and degrading treatment contrary to Article 3.

#### **Key recommendation**

- ✓ Adequate safeguards against SGBV should be ensured for any prisoners or detainees held in segregation.

Verbal sexual threats, abuse and mocking are also typical elements of sexual torture, because they enhance feelings of humiliation and degradation.

The application of electrical current to the genitals, sometimes in conjunction with anal torture, is mostly used against men. Men and women may also be subjected to forced

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62 *Hellig v. Germany*, 7 July 2011 (Application No. 20999/05), <<https://www.conjur.com.br/dl/decisao-corte-europeia-direitos-humanos26.pdf>>.

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masturbation. The resulting trauma is enhanced by verbal abuse. Prisoners may be placed naked in cells with family members, friends or total strangers, thereby breaking cultural taboos, infringing their dignity and integrating sexual humiliation in the detention process. This can be made worse by the lack of privacy when using toilet facilities.

Additionally, prisoners may be forced to abuse each other sexually, which can be particularly difficult to cope with emotionally.<sup>63</sup> Women and girls are at particular risk of torture and ill-treatment during pre-trial detention because interrogators may use sexual abuse and violence as a means of coercion to extract confessions or information or to punish and humiliate them. Pregnant women are particularly vulnerable to torture. A woman facing torture risks miscarriage and other health risks, as well as damage to the foetus.<sup>64</sup>

The fear of potential rape among women, given the profound cultural stigma associated with rape, can add to the trauma. Other significant traumas to women, not experienced by men, include the potential pregnancy, the fear of losing one's virginity and the fear of not being able to have children.<sup>65</sup>

Torture may also be motivated by gender, such as in cases where "women were raped allegedly for their participation in political and social activism".<sup>66</sup>

### Case law example:

#### *Aydin v. Turkey* (1997)<sup>67</sup>

Şükran Aydin was 17 years old when a group of village guards and a *gendarme* arrived in her village. Four members of the group came to her family's home and questioned them about recent visits PKK members had made to their house. After being subjected to threats and insults, Şükran and her family were forcibly removed from their home and taken to the village square, where other villagers were also being held. Once they arrived, Şükran, her father and her sister-in-law were blindfolded and driven to the Derik *gendarmerie* headquarters. Şükran was separated from her family. Over the course of more than three days, she was severely beaten, stripped and sprayed with cold water from high-pressure jets while being spun in a tire.



63 *Istanbul Protocol, op. cit.*, note 61.

64 Commission on Human Rights, Question of the Human Rights of All Persons Subjected to any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Nigel S. Rodley. E/CN.4/1995/34. 1995. para. 18.

65 *Istanbul Protocol, op. cit.*, note 61.

66 Report of the Special Rapporteur, 12 January 1995, E/CN.4/1995/34, para. 18.

67 *Case of Aydin v. Turkey* (57/1996/676/866), 25 September 1997; see also "Aydin v. Turkey", Centre for Women, Peace and Security website, <<http://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/aydin-v-turkey/>>.

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She was taken, clothed but blindfolded, to an interrogation room, where a man in military clothing forcibly removed her clothes and raped her. Before her release, Şükran was forced to go back into the room where she had been raped. She was beaten for an hour by multiple assailants and warned not to report what they had done to her. The court found that “the rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence.” Both art. 3 (Prohibition of torture) and art. 13 (Right to an effective remedy) were found to be violated.

This landmark ruling recognised that an act of rape by public officials or another person acting in an official capacity constitutes a violation of the human right to be free from torture and other cruel, inhuman and degrading punishment or treatment, thus no longer crimes of sexual violence in domestic law.

Approaching SGBV in places of deprivation of liberty as a potential form of torture or other ill-treatment is important, as it acknowledges the grave nature of such abuse. Under international law, no derogation from the prohibition on torture is permitted. In terms of prosecuting and punishing perpetrators, there should be no immunity from prosecution for crimes charged as torture.

However, applying torture analysis to some forms of gender-based violence can present additional challenges. For example, “in criminal prosecutions, recognizing rape as torture may require an additional layer of evidence to prove the elements of both crimes.”<sup>68</sup> There may be difficulties in securing forensic evidence, and statutes of limitations may mean that even when “anti-torture legislation exists, prosecutions and convictions are relatively rare, and, where they take place, are often for less serious offences, such as abuse of power, assault or felonious injuries.”<sup>69</sup>

The complex dynamics of gender-motivated violence and its impact on victims are often blurred and the jurisprudence around torture has been slow to recognize the gender aspects of this form of violence. Male victimization in this form is often hidden behind “the rubric of ‘abuse’ or ‘torture’”, and so rape prosecutions can shed light on this form of abuse but also break down stereotypes, such as “males initiate sex; they

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68 Sarah Fulton, “Redress for Rape: Using international jurisprudence on rape as a form of torture or other ill-treatment”, Redress Trust, 2013, p. 26.

69 “Torture in Europe: The Law and Practice, Regional Conference Report”, Redress Trust, 2012, pp. 28-29.

## 2. CORE CONCEPTS

are not victimized by rape”, or “males cannot be raped because they would be able to defend themselves and prevent it.”<sup>70</sup>

Conversely, applying the language of “torture” to cases of rape and sexual violence, without taking into account the gender aspect in case of female victims, can mean that violence against women is not acknowledged as a human rights violation in its own right, namely as gender-based violence.

Given the complexities involved, determination of whether to apply the anti-torture legal framework to cases of SGBV can most effectively be done on a case-by-case basis and according to the wishes of the victim in line with their needs and with their informed consent.

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<sup>70</sup> Fulton, *op. cit.*, note 68, p. 26.

An abstract illustration featuring a person's torso and arms. The figure is rendered in a stylized, geometric manner using a palette of warm orange and cool blue tones. The person's arms are crossed, with one hand resting on the other. The background is a textured, light blue-grey color. The overall composition is clean and modern.

### 3. BACKGROUND: WHAT DO WE KNOW ABOUT SEXUAL AND GENDER-BASED VIOLENCE IN PLACES OF DEPRIVATION OF LIBERTY?

# 3. BACKGROUND: WHAT DO WE KNOW ABOUT SEXUAL AND GENDER-BASED VIOLENCE IN PLACES OF DEPRIVATION OF LIBERTY?

There have been very few studies on the prevalence of SGBV in places of deprivation of liberty, the characteristics of perpetrators and victims, the forms that such violence takes and how SGBV intersects with other forms of violence. Unlike other forms of GBV, there have been no multi-country studies of the problem, and few OSCE participating States carry out large-scale surveys on it. Nevertheless, existing research does provide some important insights into the different types of abuse, the perpetrators and victims and other factors that can increase vulnerability to SGBV.

## **3.1. The nature of places of deprivation of liberty**

By their very nature, places of deprivation of liberty are closed, far from the public eye, highly controlled and largely same-sex environments. Authority is exercised on a daily basis over detainees who are confined against their will and who may have a history of violence or social problems. In theory, the controlled nature of places of deprivation of liberty suggests that measures to prevent SGBV should be more effective than those used in the community at large.

Gender-based violence is an expression of power inequalities between individuals or groups because of their gender. The controlled environment of places of deprivation of liberty may mask the elements of inequality and control that characterize incidents of SGBV. It follows that the causes and consequences of this form of violence may not be properly identified and addressed. The dynamics of power and control may be subtle and can take many different forms depending on the sexes of the perpetrator and the victim, as well as the specific form of SGBV. Recognizing such dynamics is the first step towards protecting individuals against SGBV.

#### **Key recommendation**

- ✓ Research should be conducted on risk of SGBV in places of detention. In addition, any existing information on the occurrence of SGBV in places of detention should be analyzed in order to develop appropriate policies and safeguards.
- ✓ Discussions about the problem of SGBV should involve all relevant ministries, practitioners at places of detention, prisoners' associations and human rights and gender experts. Those discussions can provide useful information for the development of action plans.
- ✓ Police and prison administrations should facilitate the work of monitoring bodies, including by granting them confidential and unhindered access to all detainees and/or prisoners.

## **3.2. Who are the victims and the perpetrators?**

The range of people who can perpetrate SGBV is as varied as the victims. This section outlines potential perpetrators and victims.

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#### **Potential perpetrators and victims include:**

- \* Authorities involved in arrest, detention, searches, investigation and interrogation;
  - \* Prison officers, prison managers and others who work in places of detention, including prison medical staff;
  - \* Detainees/prisoners;
  - \* Service providers, healthcare providers, lawyers or community members who work in places of detention;
  - \* Members of monitoring teams; and
  - \* Visitors, including family members (including during conjugal visits), friends or others.
- 

Children living in prison with a parent, and children of prison staff, may also be at risk of abuse.

It is widely recognized that men are the most common perpetrators and women and girls the usual victims of SGBV. However, it is also important to recognize that men and boys can also be victims of SGBV, especially in places of deprivation of liberty. Also, not only men, but women too, can commit such violence.



### 3. BACKGROUND

Research on women who commit SGBV is scarce, but they can also be perpetrators in places of deprivation of liberty. Practitioners in the United States point out that many corrections officers, like other individuals, “do not take sexual abuse committed by women as seriously as abuse committed by men”, and prison authorities at times dismiss sexual violence committed by women as “cat fights” or merely part of “replicating family structures” in prison.<sup>71</sup>

Rape and sexual assault committed by women is generally poorly understood, and authorities may fail to identify it or to understand the gender dimensions or power dynamics involved. In focus groups conducted in women’s facilities in the United States, for example, some staff members were reticent to use the term “predatory” to describe sexual behaviour among female inmates, yet they acknowledged that some female inmates used grooming tactics and exerted power over victims through intimidation.<sup>72</sup>

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#### What do we know about perpetrators of SGBV?

Information about the characteristics of known perpetrators of SGBV can help to make risk assessment tools more effective. It can also help to identify those who have the potential to commit violence. While such information is limited and may not be comparable between countries, the list below may still be instructive.

A review of research conducted in the United States indicates that there are both static and dynamic factors that indicate a risk that a prisoner will commit sexual assault within a prison or detention facility<sup>73</sup> (note that the sex of the offenders is not specified):

- \* Being under the age of 30 but older than the victim;
- \* Being physically stronger than the victim; and
- \* Being more accustomed to incarceration than the victim.

It has also been observed that detainees who commit sexual assault in prisons or detention facilities are:

- \* More likely to have spent time in juvenile detention facilities;
- \* More likely to have lived in an urban area prior to incarceration;
- \* More likely to have committed a violent crime;
- \* More likely to be affiliated with a gang; and
- \* More likely to break other prison rules.

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71 David Kaiser and Lovisa Stannow, “The Shame of Our Prisons: New Evidence”, *The New York Review of Books*, 24 October 2013, <<http://www.nybooks.com/articles/2013/10/24/shame-our-prisons-new-evidence/#fn-3>>.

72 “Sexual Violence in Women’s Prisons and Jails: Results From Focus Group Interviews”, *Staff Perspectives: Sexual Violence in Adult Prisons & Jails*, National Institute of Justice, Vol. 3, March 2009, pp. 8-9.

73 Kim English *et al.*, “Sexual Assault in Jail and Juvenile Facilities: Promising Practices for Prevention and Response”, Final Report, United States Department of Justice, 2011, p. 6.

#### 3.2.1. Women

Women deprived of their liberty are at risk of SGBV not only because of gender inequality, power imbalances and discrimination in society more generally but because places of deprivation of liberty are usually spaces that do not take into account different life circumstances and needs. The circumstances in which women come into contact with the criminal justice system often underscore discrimination and inequality suffered by women in the society. Thus, they need to be analysed to understand how to effectively step up the prevention of SGBV which may occur in deprivation of liberty.

The specifics of women's pathways to incarceration unpins the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the first comprehensive international guidance on women in places of deprivation of liberty.<sup>74</sup>

Women are imprisoned much less often than men for violent crimes.<sup>75</sup> Globally, women make up a small proportion of those in custody or prison with percentages ranging between two to nine per cent worldwide. While the vast majority of prisoners are male, research compiled for the World Female Imprisonment List indicates that the female prison population levels have grown much faster than male prison population levels, with the number of women and girls in prison increasing by 50 per cent between 2000 and 2017 while the male prison population increased by around 20 per cent<sup>76</sup>.

In the United States, for example, the number of women held in local jails (pre-trial detention) increased by five times between 1970 and 2014. This increase has been attributed to factors such as changes in the criminalization of drug offences and increasing arrests of women for low-level offences.

The majority are imprisoned for economic, non-violent offences, often linked to their financial situation or experience of violence. Poverty, discriminatory laws, lack of enjoyment of economic, social and cultural rights and related obstacles in accessing justice increase the likelihood of women being detained. For example, women offenders often lack the financial means to pay for legal representation or alternatives to custodial sentences, such as fines or obtaining bail.

Women who become incarcerated have often been exposed to violence before incarceration, making them vulnerable to violence in detention as well. The Special Rapporteur on violence against women has noted that the most significant vulnerability factor for SGBV is the "strong link between violence against women and women's in-

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74 See the complete Bangkok Rules here: <[https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)>.

75 See "Key facts", Penal Reform International website, <<https://www.penalreform.org/priorities/women-in-the-criminal-justice-system/key-facts/>>.

76 Roy Walmsley, Institute for Criminal Policy Research, World Female Imprisonment List, 4th edition, 2017.

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carceration, whether prior to, during or after incarceration”.<sup>77</sup>

When analysing women’s risk of experiencing SGBV, it is necessary to take into consideration a number of factors including any physical, sexual or psychological form of violence, including domestic violence, they might have suffered before imprisonment, as well as mental health-care needs, drug or alcohol dependency, caretaking responsibilities. Research from the UK found high levels of brain injury amongst women prisoners. Of 173 female offenders screened using a brain injury screening index tool, 64 per cent reported a history indicative of a brain injury and many had sustained the injury as a consequence of domestic violence.<sup>78</sup>

The likelihood of post-release victimisation and abandonment by their families because of the experience of SGBV should also be taken into consideration.

Women victims of so-called crimes of honour, domestic violence or human trafficking and prostitution can be administratively detained, supposedly for their own protection or rehabilitation.

These examples show that women may have experienced violence prior to incarceration or as part of the process that led them to be incarcerated. Experiences of SGBV in situations of deprivation of liberty can thus further exacerbate their physical and psychological harm and/or contribute to them developing coping mechanisms that further increase their risk of repeated abuse and violence. An experience of SGBV in deprivation of liberty may cause long-term mental-health problems, depression, anxiety, post-traumatic stress disorder, self-harm and other serious medical conditions.

Because women are a minority group within prison systems overall, staff and management may not be adequately prepared to meet their specific needs. These needs “can differ widely to those of men, whether due to gendered identities and biological differences — or forms of discrimination, such as histories of violence and victimization.”<sup>79</sup>

Some OSCE participating States use assessment tools to determine, among other things, an individual’s risk level for committing another crime, where and how they should be housed within detention facilities and the types of programmes and services they should be eligible for. But the accuracy of these tools is generally tested on samples that only, or primarily, include men. The tools do not take into account research that shows that women generally pose less risk than men of reoffending or

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77 Special Rapporteur on violence against women, Pathways to, conditions and consequences of incarceration for women, 21 August 2013, A/68/340, para 2.

78 Penal Reform International, Global Prison Trends Report 2019, <[https://cdn.penalreform.org/wp-content/uploads/2019/05/PRI-Global-prison-trends-report-2019\\_WEB.pdf](https://cdn.penalreform.org/wp-content/uploads/2019/05/PRI-Global-prison-trends-report-2019_WEB.pdf)>.

79 Jo Baker and Therese Rytter, “Conditions for Women in Detention, Needs, Vulnerabilities and Good Practices”, Dignity Danish Institute Against Torture, 2014, p. 23.

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committing another crime.<sup>80</sup> As a result, women may be classified as a higher risk than the real level of threat they pose, barring them from many prison-based educational, vocational and rehabilitative programmes, among other things.<sup>81</sup> One investigation found that many of these assessment tools are also racially biased, especially against people of African descent.<sup>82</sup>

Women prisoners have varied needs, ranging from the provision of hygiene supplies to increasing the availability of vocational training, but they also have different physical, mental and emotional needs from those of male prisoners, such as coping with histories of abuse. Women may also “respond differently to security regimes and require less harsh forms of physical restraint.”<sup>83</sup>

#### National studies on female prisoners’ lifetime experiences of GBV



**England and Wales:** A prisoner survey on the childhood and family background of women prisoners found that 53 per cent reported having experienced some form of emotional, physical or sexual abuse in the past, including during childhood.<sup>84</sup>

**European Union countries:** Surveys have found that, in their lifetimes, as many as 30.7 per cent (Finland<sup>85</sup>) and 57 per cent (Germany)<sup>86</sup> of incarcerated women have experienced sexual abuse, and 58 per cent (Hungary)<sup>87</sup> experienced physical abuse before being incarcerated.

**Armenia, Georgia, Kazakhstan and Kyrgyzstan:** Research conducted in these four countries reveal clear links between women’s incarceration and past experiences of physical and/or sexual abuse. For example, of a small sample of female prisoners in Kyrgyzstan

80 “Key facts”, *op. cit.*, note 75.

81 Stephanie S. Covington, “Women in Prison: Approaches in the Treatment of Our Most Invisible Population”, *Women and Therapy Journal*, Vol. 21, No. 1, 1998, pp.141-155, <<https://www.centerforgenderandjustice.org/assets/files/15.pdf>>.

82 Anthony W. Flores, Christopher T. Lowenkamp and Kristin Bechtel, “False Positives, False Negatives, and False Analyses: A Rejoinder to ‘Machine Bias: There’s Software Used Across the Country to Predict Future Criminals. And it’s Biased Against Blacks’”, <[http://www.crj.org/assets/2017/07/9\\_Machine\\_bias\\_rejoinder.pdf](http://www.crj.org/assets/2017/07/9_Machine_bias_rejoinder.pdf)>; and <<http://www.motherjones.com/politics/2016/05/machine-police-future-crime-algorithm-bias>>.

83 “Women in Prison: A Review of the Conditions in Member States of the Council of Europe”, The Quaker Council for European Affairs, 2007, p. 8.

84 Cathy Robinson, “Women’s Custodial Estate Review”, National Offender Management Service, 2013, p 26.

85 Anniina Jokinen and Natalia Ollus, “STRONG: Presentation of the results from WS2-WS4; Finland and Scandinavia”, European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), 2012.

86 Mariona Bosch *et al.*, “Comparative Report: Hungary Germany, Spain”, ALTRA Project: In-Prison Support and Therapy for Victims and Perpetrators of Domestic Violence, 2007, p. 23.

87 *Ibid*, p. 22.

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who had been convicted of murder or manslaughter of a male family member, almost half stated that they had experienced sexual abuse. In Armenia and Georgia, nearly one third of surveyed prisoners, reported having been sexually abused at least once in the past.<sup>88</sup>

#### Key recommendation

- ✓ Upon arrest or incarceration, identify those women who are potentially at risk of SGBV, including victims of prior abuse, and introduce immediate protection measures.

Women who have been physically and sexually abused in the past are especially vulnerable to sexual exploitation due to the power imbalances that exist in closed settings such as prisons, police custody or pre-trial detention facilities. Due to the dependency of inmates on staff, female prisoners may be coerced into consenting to sex or to trading sex for goods or better treatment.

Inmates who have experienced violence in the past may be subjected to further victimization at the hands of other inmates or staff. Those who have been subjected to SGBV usually develop their own coping strategies,<sup>89</sup> which can also increase their vulnerability in detention. Procedures in some places of detention, such as strip searches and surveillance while dressing, bathing or in toilets can be traumatic and distressing for women, and even more so for survivors of SGBV if men are watching. Detainees or prisoners who perpetrate SGBV against those who have been abused in the past also take advantage of their victims' fears, lack of self-esteem and potential "acceptance" of violence as inevitable. For many women, gender-based violence is a continuum before, during and after being deprived of their liberty.<sup>90</sup>

Often, female prisoners' histories of victimization are overlooked or ignored by authorities. The complex needs of survivors, especially those who have associated problems, are not always given the support they need. This is because female prisoners are a minority in prisons and because awareness of gender-based violence is only slowly informing the way prisons and detention facilities operate.

While much abuse against female prisoners is perpetrated by male staff members,

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88 Frances Sheahan, "Who are women prisoners? Survey results from Kazakhstan and Kyrgyzstan", Penal Reform International (PRI), 2014, pp. 14-15; Tomris Atabay, "Who are women prisoners? Survey results from Armenia and Georgia", PRI, 2013, p. 20.

89 "Coping Strategies of Adult Sexual Assault Victims", Criminal Justice website, <<http://criminal-justice.iresearchnet.com/forensic-psychology/coping-strategies-of-adult-sexual-assault-victims/>>.

90 Special Rapporteur on violence against women, Pathways to, conditions and consequences of incarceration for women, 21 August 2013, A/68/340, para 2.

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SGBV also occurs in female-only prisons and facilities staffed only by women. These abuses may be ignored or not taken seriously due, in part, to the assumption that female detention facilities are less violent than their male equivalents. CEDAW is clear that when state officials treat female detainees or prisoners in a way that is sexually intrusive or invasive, the acts constitute both GBV and gender discrimination.

Women and girls, themselves, are not only at risk of torture, but may also be used as means of torturing others. When men and women are forced to witness the rape of their family members, including their wives, sisters, partners, daughters or mothers, this is a distinct psychological form of torture. According to the report of the Special Rapporteur on violence against women, its causes and consequences, the act of rape is often not qualified as torture itself but is “viewed as a weapon of the torturer”, “an attack on the male” and torture of a male victim.<sup>91</sup>

#### 3.2.2. Men

GBV against men and boys includes conduct targeting men and boys because of their sex, sexual orientation and/or socially constructed gender roles, regardless of whether it also entails sexual violence or not. Although data is limited because of under-reporting, experts believe that sexual violence is a common manifestation of GBV against men and boys in places of deprivation of liberty. It occurs, in particular, as prisoner-on-prisoner violence. In prisons and detention facilities, such violence can take many forms, including rape, gang rape, sexual slavery, enforced nudity and sexual coercion. SGBV against men in places of deprivation of liberty is about exercising power and breaking the morale of individuals or groups. When men are victimized in detention and subjected to abuse and violence, it tends to be because of the gender dimensions of power that are present in the society and amplified in closed facilities.

Because such closed facilities tend to be male-dominated, the dominant form of masculinity can be violent and men are expected to conform on the basis of widespread unwritten rules. If they do not, they are at risk. As in the case of women, SGBV against men should also be seen intersectionally. For example, factors such as cultural, religious and minority background, age and social status should also be taken into account when assessing the extent to which an individual could be at risk of SGBV. In closed facilities, men can be victimized by other inmates as a form of punishment, to exert control, to terrorize, to threaten or to disempower an individual or a community. Victimizing a man in certain communities is often regarded as a demonstration of a victim’s weakness and inability to protect his family or community.

In 2002, the World Health Organization identified sexual violence against men and boys as a significant problem that has largely been ignored by healthcare providers,

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91 Report of the Special Rapporteur on violence against women, its causes and consequences, 26 January 1998, E/CN.4/1998/54, para. 131.

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non-governmental organizations, governmental agencies, the judiciary and others.<sup>92</sup> However, the general perception and recognition of the scale and seriousness of SGBV against men and boys in places of deprivation of liberty remains low, and it has so far been handled mostly in contexts of investigation of torture and ill-treatment. The difficulty of raising awareness among practitioners is also exacerbated by the fact that some legal frameworks do not consider rape a crime that men can also be the victims of. Because men may perceive sexual violence as emasculating, they may be reluctant to report it and are more inclined to call their experiences abuse or torture. Such perceptions are exacerbated when there is a suggestion of homosexuality or where the victim is presumed to have sought the abuse, particularly if the victim experienced physical arousal as a result of it.

As in the case of women, the physical consequences of sexual abuse of men include, but are not limited to, damage to the victims' reproductive or sexual capacity, sexually transmitted and other infections, genital damage, incontinence and chronic pain. Among the psychological consequences men victims suffer are long-term mental-health problems, depression, anxiety, post-traumatic stress disorder, self-harm and others. One of the key psycho-social consequences is demoralization because of perceived feminization and emasculation. The stigma experienced by victims can in some cases transfer to their spouse and children.<sup>93</sup>

Under-reporting of SGBV against men hampers the ability of the state to address it. There are many reasons why SGBV is under-reported. For one, as noted, in some jurisdictions the charge of rape does not apply to men. In addition, if SGBV is committed by a man against a man, victims may fear being accused of being a homosexual or may experience shame.

Addressing legal and social barriers will not automatically guarantee that victims' experiences will be received with sensitivity. In many cases, medical personnel may not be trained to identify and treat male victims, or they may not believe that men can be victimized.<sup>94</sup> In some countries, prisoners who have been victims of same-sex rape have been singled out and a special label or mark has been placed in their prisoner file or on their clothes, cells or badges.<sup>95</sup> Prison staff may also fail to take appropriate steps to stop or prevent such ill-treatment, may perpetrate it themselves or may be complicit in perpetuating discriminatory treatment and abuse.

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92 Etienne G. Krug et al. (eds.), *World report on violence and health* (Geneva: World Health Organization, 2002), <[http://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/introduction.pdf](http://www.who.int/violence_injury_prevention/violence/world_report/en/introduction.pdf)>.

93 "When No One Calls It Rape: Addressing Sexual Violence Against Men and Boys in Transitional Contexts", International Center for Transitional Justice, December 2016, <[https://www.ictj.org/sites/default/files/ICTJ\\_Report\\_SexualViolenceMen\\_2016.pdf](https://www.ictj.org/sites/default/files/ICTJ_Report_SexualViolenceMen_2016.pdf)>.

94 *Ibid.*

95 Tomris Atabay, *Handbook on Prisoners with special needs* (Vienna: United Nations Office on Drugs and Crime, 2009), p. 106, <[https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_Prisoners\\_with\\_Special\\_Needs.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf)>.

#### Key recommendations

- ✓ Legal frameworks should have explicit provisions on the criminalization of sexual violence against men.
- ✓ Detention facilities should make every effort to ensure that cases of SGBV are also reported by men.
- ✓ Healthcare staff should document all signs of SGBV that they become aware of and report them to the competent authorities, with the consent of the detainee/prisoner where possible.

#### 3.2.3. Juvenile detainees

While this publication does not cover the topic of juvenile justice in its entirety, it does include information about some of the factors that can make young people at risk of being victimized.<sup>96</sup> The background and situation of juvenile detainees varies significantly, and authorities should pay attention to their individual and intersecting needs. This means they should consider not only their age, but also their gender, level of development and maturity, level of education, previous experience of prison culture, and history of violence, exploitation or intimidation.

Young offenders are particularly at risk of SGBV perpetrated by staff or other detainees following arrests, during interrogations and especially when they do not have “prompt access to their parents or caregivers and to legal assistance.”<sup>97</sup> During transport and pre-trial detention, young offenders may be detained with adults, or juveniles who are awaiting trial may be held with convicted juveniles.

The practice of detaining juveniles in the same facilities as adults puts young people at direct risk of forced or coerced sexual activity or other abuse by adult detainees. However, SGBV also takes place between peers in juvenile facilities and can be perpetrated by institutional staff. There is also increased risk when boys and girls are detained together or when younger and older children are placed together.<sup>98</sup> Co-housing young people with differing needs and levels of vulnerability can also pose problems.

There is limited research about the experiences of girls and boys in juvenile detention, but surveys conducted in the United States show a distinct pattern, namely that rates of youth-on-youth sexual assault in female-only facilities were more

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96 The UN Convention on the Rights of the Child defines a child as anyone below the age of 18, but states may set the age of criminal responsibility at a lower level. The UN Standard Minimum Rules for the Administration of Juvenile Justice (known as the Beijing Rules) notes that the term “juvenile offender” can encompass a “wide variety of ages[... ] ranging from 7 years to 18 years or above.”

97 “Jean-Jacques Gautier NPM Symposium, Outcome Report: Addressing children’s vulnerabilities in detention”, Association for the Prevention of Torture, 2014, p. 14.

98 *Ibid.*



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than three times greater than those in male-only facilities (5.3 per cent, compared with 1.5 per cent). In male-only facilities, however, 5.7 per cent of juveniles reported staff sexual misconduct compared with 1.4 per cent of juveniles in female-only facilities.<sup>99</sup> While a number of factors may contribute to the differences in reported rates of SGBV, the findings demonstrate that girls and boys deprived of their liberty are vulnerable in different ways. Measures to address their needs must therefore be gender-sensitive.

Children are particularly vulnerable to torture and other ill-treatment and experience pain and suffering in ways that differ from adults, owing to their physical and emotional development and their specific needs. Thus, in determining the acts that may constitute ill-treatment or torture, due consideration must be given to the physical and mental effects experienced and the age of the victim.

In the case of children, higher standards must be applied to classify treatment and punishment as cruel, inhuman or degrading treatment. In addition, the particular vulnerability of children imposes a heightened obligation of due diligence on states to take additional measures to ensure their rights to life, health, dignity and physical and mental integrity.

#### 3.2.4. LGBTI Detainees and Prisoners

LGBTI persons in deprivation of liberty are likely to be sexually victimised, report mental health problems, experience solitary confinement and be subjected to sanctions.<sup>100</sup> Because they do not conform to gender expectations, they are frequently discriminated against and face violence and harassment.

As noted by the Association for the Prevention of Torture, LGBTI persons in detention – or perceived as belonging to this group – are in a situation of particular vulnerability, at risk of human rights violations and abuses – including by fellow detainees – throughout the entire criminal justice system.<sup>101</sup>

In 2010, the Council of Europe Committee of Ministers issued a recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Recommendation 4 is to “ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons , and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and

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99 “Facility-level and Individual-level Correlates of Sexual Victimization in Juvenile Facilities 2012”, Bureau of Justice Statistics, 2016, p. 12.

100 Healthcare in Prisons, *op. cit.*, note 78.

101 Association for the Prevention of Torture, *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*, 2018, <<https://apt.ch/en/resources/lgbti-monitoring-guide/>>.

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respect the gender identity of transgender persons.”<sup>102</sup>

The UN Special Rapporteur on torture has noted that LGBTI individuals report higher rates of sexual, physical and psychological violence in detention than the general prison population, and that violence against these individuals is prevalent in custodial settings.<sup>103</sup> This is also related to strict hierarchies often maintained by inmates within detention facilities, and those at the bottom of the hierarchy typically suffer double or triple discrimination.<sup>104</sup> Within some places of detention, those identified by other prisoners as LGBTI occupy the lowest level of the prison’s informal social hierarchy. In Georgian men’s prisons, for instance, unwritten rules mean that gay and bisexual men and men who have sex with men are not permitted to share cells with other prisoners. Nor are they allowed, by other inmates, to “eat food together, use the same tableware or shake hands.”<sup>105</sup>

In places of deprivation of liberty, the stigmatization, discrimination and lack of legal protections LGBTI individuals face in the general community can be replicated or aggravated.

LGBTI women and men who are deprived of their liberty are at particular risk of torture and other ill-treatment also because “[c]riminal justice systems tend to overlook and neglect their specific needs at all levels.”<sup>106</sup> Torture and ill-treatment of LGBTI individuals, or individuals perceived as LGBTI, has been documented in closed facilities to have been perpetrated by “police officers, prisons guards, or their own peers while State agents turn a blind eye.”<sup>107</sup>

Torture and other ill-treatment can take a number of forms, including humiliating and invasive body searches, and subjecting gay men to anal examinations in order to “prove” their homosexuality. It is important to note that each distinct group faces different issues and challenges: for example, the vulnerabilities encountered by transgender and intersex individuals in places of detention may be very different from those faced by lesbians, gay men or bisexuals. Fear of reprisals and a lack of trust in complaint mechanisms can prevent them from reporting abuses in custody. Their placement in solitary confinement or administrative segregation for their own “protection” can constitute an infringement of the prohibition of torture and other ill-treatment.

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102 Recommendation CM/Rec(2010)5 adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers’ Deputies. Available at: <<https://wcd.coe.int/ViewDoc.jsp?id=1606669>>.

103 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, A/HRC/31/57, para. 34.

104 Report of the Special Rapporteur on torture to the UN Human Rights Council, Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, 5 February 2010, A/HRC/13/39/Add.5, para.231.

105 “Legal Situation of LGBTI Persons in Georgia”, Human Rights Education and Monitoring Center (EMC), 2016, p. 65.

106 *Ibid.*

107 “Fact Sheet: Criminalization”, Office of the United Nations High Commissioner for Human Rights, <[https://www.unfe.org/system/unfe-5-UN\\_Fact\\_Sheets\\_v6\\_-\\_Homophobic\\_and\\_transphobic\\_violence.pdf](https://www.unfe.org/system/unfe-5-UN_Fact_Sheets_v6_-_Homophobic_and_transphobic_violence.pdf)>.

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Authorities have a responsibility to take reasonable measures to prevent and combat violence against people of diverse sexual orientation and gender identity or expressions by other detainees/prisoners without further violating their rights.

#### Key recommendations

- ✓ Heads of detention facilities should ensure zero-tolerance towards discrimination against LGBTI persons by staff and detainees/inmates; and
- ✓ Protective segregation should only be instituted with the agreement of the prisoner/detainee concerned and should be subject to safeguards and regular review.

The UNODC *Handbook on Prisoners with Special Needs* notes that “myths persist in many prison systems about ‘predatory homosexuals’, implying that people with a same sex sexual orientation are themselves the perpetrators of sexual abuse and rape.”<sup>108</sup> In fact, LGBTI prisoners or people whose sexual orientation or gender identity differs from “what is expected in a heteronormative social context”<sup>109</sup> face a high risk of becoming victims of SGBV at the hands of other detainees/prisoners or staff when there are no effective prevention and protection mechanisms in place. In the United States, for instance, a 2005 study showed that 41 per cent of gay and bisexual men were sexually assaulted in prison, compared to nine per cent of heterosexual men. A quarter of female prisoners who were raped in three United States prisons were bisexual or lesbian.<sup>110</sup>

As with men, women may also be victims of SGBV based on their real or perceived sexual orientation or gender identity. This violence may be perpetrated by other detainees or staff, both men and women. The Special Rapporteur on violence against women has expressed concern at lesbian prisoners “being placed in cells with men if they refused the sexual advances of prison staff”, adding that “female prisoners whom guards viewed as ‘masculine’ in appearance were subjected to harassment, physical abuse and ‘forced feminization’.”<sup>111</sup>

In some prisons, same-sex relations between women prisoners may be more apparent and more accepted than between men prisoners. For example, in a 2009 focus group, some staff members of women’s prisons in the United States expressed the view that “displays of physical affection and touching among the women were an accepted part

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108 Atabay, *op. cit.*, note 95 p. 105.

109 Jean-Jacques Gautier NPM Symposium, Outcome Report, “Addressing situations of vulnerability of LGBT persons in detention”, Association for the Prevention of Torture (APT), 2015, p. 13.


110 *Handbook on Prisoners with Special Needs*, p. 105, *op cit*, note 95.

111 “Discrimination and violence against individuals based on their sexual orientation and gender identity”, Office of the United Nations High Commissioner for Human Rights, 4 May 2015, A/HRC/29/23, para. 36.

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of life among women inmates”, and some indicated that they were “ambivalent and conflicted about their role in writing disciplinary reports about physical contact between women in a relationship.”<sup>112</sup> If prison officials consider female homosexuality to be less taboo than male homosexuality, then it is also possible that they will not act to prevent SGBV between women detainees.

Transgender and intersex individuals may be targeted by other detainees or staff due to prevailing discrimination and phobias against them in society. They may also be put in situations of vulnerability when authorities do not consider their needs, particularly when it comes to prison or cell allocation and body searches. In such cases, the detainees concerned should be consulted about whether they will be held in a facility for women or men and by which gender of staff member they feel most comfortable being searched.



In the UK, Prison Service Instruction 17/201656 (The Care and Management of Transgender Offenders) issued by the National Offenders Management Service, provides for arrangements to be in place to determine the legal sex of all offenders during the initial assessment. Trans detainees must be asked their views on which part of the prison estate best reflects the gender with which they identify. Where a trans detainee wishes to be allocated in part of the prison estate that is not in accordance with their legal sex, a “Transgender Case Board” will decide on a case-by-case basis. The policy deliberately uses the term “transgender” rather than “transsexual” and acknowledges that some offenders may have a more fluid or neutral approach to their gender identity.<sup>113</sup>

Practice in this area is still evolving and it is hoped that an evidence base for good practices will emerge over time.

The process of developing responsive practices is complicated by the lack of international standards specifically dealing with the situation of LGBTI detainees, limited data on their prison experiences and hostile attitudes towards them, which can range from lack of sensitivity about how to approach the issue of LGBTI persons in prison, through to outright homophobia or transphobia.

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112 Sexual Violence in Women’s Prisons and Jails, *op. cit.*, note 72, p. 5.

113 Association for the Prevention of Torture (APT), *Towards the effective protection of LGBTI Persons Deprived of Liberty*, (Geneva: ATP, 2018) <[https://apt.ch/content/files\\_res/apt\\_20181204\\_towards-the-effective-protection-of-lgbti-persons-deprived-of-liberty-a-monitoring-guide-final.pdf](https://apt.ch/content/files_res/apt_20181204_towards-the-effective-protection-of-lgbti-persons-deprived-of-liberty-a-monitoring-guide-final.pdf)>.

#### **Key recommendation**

- ✓ Whenever possible, policies on body searches of LGBTI individuals and the allocation of transgender or intersex individuals should be developed in consultation with LGBTI detainees/prisoners and relevant expert/advocacy groups.

Initiatives to ensure that people of diverse sexual orientation and gender identity or expression are not victimized while in detention require careful balancing of the need to provide protection while not isolating and excluding individuals from prison services and activities. Protective measures should also be used in such a way that they do not draw unnecessary attention to the LGBTI status of the individual detainee or prisoner.

### **3.3. Factors that increase vulnerability to sexual and gender-based violence**

Factors that place detainees and prisoners in situations of vulnerability underscore a “power imbalance between detainees and those in charge of them, an almost complete dependency upon the institution which has deprived them of their freedom or limits their movements, weakened social ties and stigmatization related to detention.”<sup>114</sup>

#### **Key recommendations**

- ✓ Resources should be dedicated to conducting research and analyzing existing information on the occurrence of SGBV in places of detention, including police stations, pre-trial detention facilities and correctional facilities. Efforts should include a focus on the vulnerability of particular groups, vulnerability as a consequence of detention and locations where SGBV is most likely to occur.
- ✓ Specific strategies should be introduced to mitigate the risk of SGBV for particular at-risk groups and individuals. Experts, specialist organizations and survivors of SGBV should be consulted when designing such strategies.

Individuals who come into contact with the criminal justice system may have experienced particular hardships and marginalization in their past. They may have histories of social isolation, such as exclusion from school, unemployment or homelessness.

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114 “Groups in situations of vulnerability”, Association for the Prevention of Torture Detention Focus website, <http://www.ap.t.ch/detention-focus/en/groups-in-situation-of-vulnerability/>.

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Detainees and prisoners are also disproportionately victims of childhood abuse and violence and can be dependent on drugs or alcohol or suffer from untreated mental health problems. All of these experiences can increase the risk of SGBV and impact their ability to cope with imprisonment and any resultant abuse they may face.

Authorities must be aware of how the backgrounds and specific needs of individuals deprived of their liberty can increase their vulnerability and act diligently to provide appropriate protection for such individuals. Failing to address such vulnerability factors (described in further detail below) may, in certain cases, amount to ill-treatment.<sup>115</sup>

The Association for the Prevention of Torture (APT) classifies **risk factors that reinforce vulnerability** as either personal, environmental or socio-cultural:

- **Personal factors:** age, gender, level of education, nationality, ethnicity, physical and mental health, legal situation, economic situation, lack of information, low self-esteem, past or present trauma (including torture, domestic and sexual violence), life experiences, etc.
- **Environmental factors:** the attitude of prison personnel; the personnel/detainee ratio; other prisoners' attitudes; access to, and competence of, healthcare (including mental healthcare), legal and social services; informal systems of privileges; the prison layout, including the possibility of redesigning/accommodating the space; absence of family ties, overcrowding, etc.
- **Socio-cultural factors:** the attitude of society and the media towards persons deprived of liberty, stigmatization and social exclusion, social invisibility, attitude towards minorities, corruption, etc.<sup>116</sup>



When the incarceration system is oriented towards punishment rather than rehabilitation and release, there may be only a small margin for reforms that would improve prisoner rights and safety. Under such circumstances, prisoner rights may not be prioritized or given much visibility.

While all persons deprived of their liberty may find themselves in situations of vulnerability to SGBV, those that are marginalized or are subjected to discrimination in the broader community may be even more vulnerable if protection measures are not

115 Jim Murdoch and Václav Jiříčka, *Combating ill-treatment in prison: A handbook for prison staff with focus on the prevention of ill-treatment in prison* (Strasbourg: Council of Europe, 2016), p. 47.

116 "Groups in situations of vulnerability", APT.ch, <<http://www.apr.ch/detention-focus/en/groups-in-situation-of-vulnerability/>>.

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put in place.<sup>117</sup> Authorities often fail to meet the needs of such marginalized people.<sup>118</sup> Not only may SGBV be “accepted by communities due to entrenched discriminatory perceptions”, but the marginalized status of victims tends to render them “less able to seek accountability from perpetrators, thereby fostering impunity.”<sup>119</sup>

While the table below may not be exhaustive, it identifies some of the groups that may be vulnerable if authorities do not take proper measures to address their needs and ensure their safety.

Factor	Links to SGBV
<b>Age</b>	Young detainees/prisoners in particular may be in need of special protection from sexual exploitation and gender-based violence due to their age, level of maturity and youthful appearance. <sup>120</sup> United States Congressional findings in <a href="#">the Prison Rape Elimination Act of 2003</a> posited that juveniles were five times more likely to be sexually assaulted in adult facilities compared to juvenile ones, often within their first 48 hours of incarceration. <sup>121</sup> Elderly inmates may also be at risk of being victimized by younger inmates.
<b>Ethnicity and/or “race”</b>	Ethnic and racial minority detainees and prisoners, as well as indigenous people, are often over-represented in places of deprivation of liberty and can be at risk of SGBV since discrimination present in society is often reproduced or magnified in prison or detention settings. <sup>122</sup>

117 *Ibid.*

118 Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 7 October 2013, A/68/295, para. 67.

119 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, A/HRC/31/57, para. 9.

120 “No Escape: Male Rape in U.S. Prisons”, Human Rights Watch, <<https://www.hrw.org/reports/2001/prison/report4.html>>.

121 “In Prison, Teenagers Become Prey”, *The New York Times*, 5 June 2012, <<https://www.nytimes.com/roomfordebate/2012/06/05/when-to-punish-a-young-offender-and-when-to-rehabilitate/in-prison-teenagers-become-prey?mcubz=0>>.

122 In Spain, for example, Roma women represent 1.4 per cent of the population but 25 per cent of female prisoners. See Megan Bastick and Laurel Townhead, “Women in Prison: A Commentary on the UN Standard Minimum Rules for the Treatment of Prisoners”, Quaker United Nations Office, 2008, p. 99. In the United States, the imprisonment rate for African American women (109 per 100,000) was more than twice the rate of imprisonment for Caucasian women in 2014. See “Fact Sheet: Incarcerated Women and Girls”, The Sentencing Project, 2015, p. 2.

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In countries with a history of inter-ethnic conflict, ethnic minorities may be subjected to violence as a form of punishment and retaliation. The over-representation of minority groups in prisons and detention facilities is often a reflection of discriminatory treatment in the criminal justice system. Such discrimination also exists in places of deprivation of liberty.<sup>123</sup>

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**Religion or culture** Perpetrators of SGBV may victimize members of particular religious or cultural groups on the basis of their beliefs or taboos related to sexuality.

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**Nationality** People with foreign-national status, which can include migrants and refugees or individuals who are perceived by some to be hostile to national interests (such as those considered or perceived to be terrorists or radicalized), may be singled out for abuse. Being a foreign national may also mean that the detainee/prisoner does not speak the primary language used in the detention facility. Such prisoners may also be far from home and therefore not have family members in the country or other support networks, which may make them more vulnerable.

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**Disability (physical and mental health)** Persons with disabilities can be at risk of violence if their needs are not properly met and if the prison or detention facility does not create a safe and enabling environment for them. Detainees and prisoners with disabilities, especially, but not limited to, cognitive disabilities, can be exposed to both discrimination and victimization “that can lead to abuses, ill-treatment and violence, including rape, both from staff and fellow detainees.”<sup>124</sup> Perpetrators of violence often act

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123 The European Roma Rights Centre, for example, has documented abuse of Roma men and women while in police detention in several European countries. See documentation prepared by the European Roma Rights Centre at <http://www.errc.org/index>.

124 “Persons with Disabilities”, APT.ch, <<https://www.appt.ch/en/disabilities/>>.



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under the assumption that people with mental illness will not be taken seriously if they report sexual abuse. This should be taken into account by custody and prison officers.

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#### **High-profile individuals**

This category may include celebrities, public officials or the family members of other high-profile individuals who may be targeted due to their status in society. If they are associated with political or other crises, they may also fall prey to violence and abuse.

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#### **People involved in prostitution**

People involved in prostitution are in situations of particular vulnerability to SGBV and due to their marginalized status they may lack the confidence or support to take action after violations have occurred. Documented cases of police violence and harassment of female prostitutes take the form of raids, detention and arrest without legal grounds, as well as threats of violence, rape, extortion, harassment of a sexual nature and being coerced to provide sexual services in exchange for release from custody.<sup>125</sup> Transgender prostitutes have also reported abusive behaviour by law enforcement officials.

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#### **Roma and Sinti in prisons in the United Kingdom**



In a series of surveys carried out by Her Majesty's Inspectorate of Prisons in the United Kingdom in 2012 and 2013<sup>126</sup>, prisoners who identified as "Gypsy, Romany and Travellers"<sup>127</sup> gave more negative responses about their prison experience than other prisoners. The group gave significantly more negative responses than "non-Gypsy, Romany and Traveller prisoners" to 57 per cent of survey questions

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125 See, for example, "Community Report on Structural Violence", International Committee on the Rights of Sex Workers in Europe, 2015.

126 "People in prison: Gypsies, Romany and Travellers", HM Inspectorate of Prisons, <<https://www.justiceinspectores.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/gypsies-romany-travellers-findings.pdf>>.

127 Terminology used by the source in the original document.

for which comparative data are provided and significantly more positive responses to just seven per cent of the questions.

Prisoners from this category were significantly less likely to say that they felt safe on their way to prison and/or that they felt safe on their first night in prison. According to the survey, 46 per cent reported having felt unsafe at some point (compared with 33 per cent of non-Roma) and 24 per cent at the time of the survey (compared with 13 per cent of non-Roma). Thirty-six per cent said that they had been victimized by other prisoners (compared with 23 per cent of non-Roma) and 40 per cent by staff (compared with 27 per cent of non-Roma).

#### 3.4. Dynamic and intersecting vulnerability

While individuals can be targeted in prisons and detention facilities because they stand out from the general detained population, there is also a dynamic element to vulnerability. So-called “dynamic vulnerabilities” exist in particular circumstances or locations rather than explicitly due to an individual’s personal identity. A study of violence in German prisons, for example, revealed that most physical and sexual assaults took place in holding cells and showers.<sup>128</sup> When inmates were in these locations, they were more vulnerable. Dynamic vulnerability may be heightened at the time of arrest, during interrogation, during transit and transfer, during medical examinations or at night.<sup>129</sup>

Vulnerabilities may also be multiple or intersecting. For instance, vulnerabilities based on gender, ethnicity or foreign-national status could intersect with other factors, such as the nature of an inmate’s offence, previous history of incarceration or dependency on drugs. The level of vulnerability faced by an inmate may also depend on who an individual shares their cell with. Authorities must evaluate a range of factors when determining the risk assessment and protection needs of inmates, taking into account their intersecting vulnerabilities and profiles.

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#### Vulnerability factors may include:

- \* **The nature of the offence** – Detainees/prisoners suspected, accused or convicted of particular types of offences may be at increased risk of SGBV. Convicted sex offenders, for example, especially for offences of sexual violence including rape or crimes against children,

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128 Steffen Bieneck and Christian Pfeiffer, “Viktimisierungserfahrungen im Justizvollzug”, Research Report No. 119, Kriminologisches Forschungsinstitut Niedersachsen e.V., 2012, p. 14.

129 Research in the United States indicates that most prisoner-on-prisoner sexual violence takes place in the victim’s cell in the evening. See “Sexual Assault in Jail and Juvenile Facilities: Promising Practices for Prevention and Response”, Final Report, November 2011, p. 6, <<https://www.ncjrs.gov/pdffiles1/nij/grants/236738.pdf>>.

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may be particularly at risk of SGBV. Inmates convicted of sex crimes against minors, if their crimes become known to other inmates, are much more likely to be targets of sexual abuse in prison. A number of inmates convicted of such offences have reported being sexually assaulted by other prisoners, and all stated that the nature of their crime inspired the assault or increased its likelihood;<sup>130</sup>

- \* ***Incarceration history*** – Not having previous experience of prison culture, being a first-time prisoner or being a non-violent offender may place an individual at higher risk of SGBV;
- \* ***Time spent in detention*** – Levels of vulnerability or risk may also vary depending on the amount of time an individual has spent in detention. Perpetrators of SGBV may target first-time offenders through coercion and intimidation or promises to befriend and protect them soon after admission when they are unfamiliar with prison culture. At the other end of the spectrum, vulnerability can increase over time, and individuals serving long-term or life sentences may be in vulnerable situations because prolonged detention can have a negative impact on their physical and mental health;
- \* ***Addiction or dependency*** – This can include addiction to drugs, alcohol or gambling, as well as other problems, such as having to pay debts to fellow detainees/prisoners. Vulnerability can increase if inmates are not provided with the relevant care to help them overcome their addictions or dependencies;
- \* ***Behavioural or personality factors*** – Detainees/prisoners who isolate themselves from the wider community and/or who show signs of vulnerability, such as a lack of self-confidence, shyness or suggestibility, are at higher risk of SGBV;<sup>131</sup>
- \* ***Social isolation/economic status*** – Very poor people who cannot afford to survive in detention facilities may be forced into vulnerable situations to get money and food;
- \* ***Membership of a particular gang or lack of gang affiliation*** – Affiliations with specific groups or positions within hierarchies may place individuals in situations of vulnerability vis-à-vis other hostile groups or other higher-level members of their own group;
- \* ***Contact with the outside world*** – Detainees/prisoners who have little or no contact with family, friends, lawyers or the outside community may also be at particular risk of violence, partly due to the impact of

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130 Information collected in ODIHR's interviews with legal practitioners.

131 These particular factors were identified by practitioners and included in the German response to ODIHR's questionnaire.

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their isolation, but also because contact with the outside world provides a vital opportunity to report abuse or the threat of abuse; and

- \* **Links to the criminal justice system** – Former public officials, especially police, prison or judicial officers, police informants or other individuals who have previously co-operated with the authorities, are likely to be at risk of SGBV.
- \* **Individuals in protective custody**, such as witnesses in criminal cases or women who have been threatened with so-called honour crimes, may also be in particular situations of vulnerability in detention.

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#### Case law example: *J.L. v. Latvia* (European Court of Human Rights, 2012)



In 2005, the applicant assisted the police in securing evidence against another person in a criminal case. In 2006, the applicant himself was convicted of an unrelated crime and, upon being transferred to prison, was placed in a filtering cell with 11 other inmates, where he was assaulted and raped due to his having previously co-operated with the police. The applicant requested a transfer to another prison due to threats from those he had testified against. He was eventually transferred, but information about the potential risk to the prisoner or about previous incidents was not properly recorded by the authorities, leading to the inmate being placed in a vulnerable situation.

The Court found that the police had violated the European Convention of Human Rights (the procedural aspect of Article 3 on the prohibition of torture). The Court also noted the “lack of sufficient coordination among the investigators, the prosecution and the detention institutions to prevent possible ill-treatment of detainees who, owing to cooperation in disclosure of criminal offences, have become particularly vulnerable and prone to violence in prison.”<sup>132</sup>

### 3.5. Detention and the dynamics of power and control

The highly controlled nature of places of deprivation of liberty suggests that the impact of measures to prevent SGBV could be more verifiable than those used in the community at large. However, because gender-based violence is itself an expression of power inequality, the controlled environment of places of deprivation of liberty

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132 *J.L. v. Latvia*, Final Judgement, 17 April 2012.

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may also mask elements of inequality and control that characterize incidents of SGBV, given the existence of such power differentials in prisons and detention facilities. As a result, such violence can thrive in closed facilities if it is not properly managed.

Similarly, without good prison management, victims of SGBV may not be able or empowered to take action against the perpetrators. They may feel they have no control over the situation and, in some cases, they may feel that speaking out could put them in even greater danger.

#### **Key recommendations**

- ✓ Upon arrest or admission to prison, those who are potentially at risk of SGBV, including victims of prior abuse, should be immediately identified, and appropriate protection measures should be introduced.
- ✓ Written guidelines should be put in place detailing how a detainee/prisoner can complain and the steps to be taken when a complaint of SGBV is received, and supervision procedures should be introduced for individuals who have complained of abuse or those deemed to be at risk.

It is important that administrations and officers in closed facilities recognize the existence and effect of power dynamics in the context of abuse. When men commit SGBV against women, the power dynamics are generally understood. Less well understood, however, are the power dynamics at play in, for example, issues of control inherent in SGBV committed against male victims or by female perpetrators.

In places of deprivation of liberty, men who commit SGBV against other men are generally driven by a desire to assert power and authority over their victims. Most societies perceive men as dominant over women, and by committing SGBV against another man, males can “play on this in a strategic way by ‘feminizing’ men in the eyes of those around them... [and] men who deviate from the ‘norm’ [e.g. transgender women and those perceived as homosexual][...] may be subjected to sexual violence to pressure them to conform to certain gender roles.”<sup>133</sup>

States are obliged by international law to take measures to prevent SGBV and protect inmates from such abuse. It is therefore necessary for state representatives – whether officers, policymakers, healthcare staff or administrators – to understand the different causes and repercussions of violence based on power dynamics in prisons and detention facilities. Differing responses are required depending on whether the per-

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133 Callum Watson, “Preventing and Responding to Sexual and Domestic Violence against Men: A Guidance Note for Security Sector Institutions,” DCAF, 2014, p. 12.

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petrator is a staff member or a detainee/prisoner and in what circumstances the violence was committed. This is also important for identifying gender-based vulnerabilities, risk factors and the reasons for under-reporting.

#### Key recommendation

- ✓ Gender-sensitive management policies and a staff code of conduct should be introduced at places of detention that address SGBV and that have a zero-tolerance approach to violence and discrimination.

#### 3.5.1. Prison culture and subcultures

The management style, prevailing culture within a closed facility and subcultures among detainees and inmates can either mitigate or exacerbate SGBV depending on whether they foster respect or if they tolerate violence and negative masculinities. There are various theories about the role that the culture or subcultures play in compounding the problem of SGBV in places of deprivation of liberty.

There are two theories that can help explain why violent subcultures can develop in prison and suggest ways to improve the lives of detainees/prisoners in order to reduce incidents of violence between them. These are:

- **The deprivation model**, in which persons deprived of liberty, autonomy, security and physiological and emotional gratification and even basic goods can experience “deep psychological trauma” that leads to the development of a subculture that promotes violence as a means of self-preservation.<sup>134</sup>
- **The importation model**, in which detainees/prisoners bring their histories, social networks and links to criminal groups into the prison or detention environment).<sup>135</sup>

It is known that “very specific features of the social and physical environments of the prison”, such as characteristics of individual prisoners, structural and situational factors of the institution itself (e.g., the architecture as well as security levels) management practices (e.g., staffing, training, management style) and even outside influences (e.g., political pressures), are all factors that contribute to the presence of violence in closed settings.<sup>136</sup>

In some cases, prison authorities may effectively relinquish control to prisoner self-

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134 Awofeso and Naoum, *op. cit.*, note 27, p. 149.

135 Ross Homel and Carleen Thompson, “Causes and Prevention of Violence in Prisons”, Griffith University, 2005, p. 1.

136 *Ibid.*, p. 2.

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governing bodies or other informal hierarchies that impose unwritten codes of conduct. Such prison subcultures are likely to exploit weaker prisoners and use violence against those who infringe unwritten codes of conduct. The organization of prisoner groups or gangs for self-protection can indicate that the monopoly on violence is not controlled by the administration.

Addressing SGBV in prisons requires an understanding of how the dominant prison subculture reacts to violence and abuse. The complexity and interrelated nature of the factors that contribute to a prison subculture that facilitates SGBV makes it difficult to identify individual measures to prevent and respond to it effectively. Instead, governments, policymakers and criminal justice facilities must take an approach that considers all factors and includes good practices. By doing this, they will be better able to create a prison or detention environment in which human rights are respected, but at the same time balanced against security concerns, and where the culture reflects mutual respect and tolerance.

#### Examples of prison subcultures



In a number of other countries of the OSCE region, criminal and prison subculture exist in which groups of prisoners are organized in an informal hierarchy governed by their own codes and rules of conduct. Such subcultures develop more easily when the facility is informally self-governed by the prisoners and authorities retain the control of the external perimeter only. Prisoners low in the hierarchy may be subjected to degrading treatment, violence and other punishment, inflicted by other prisoners/detainees rather than prison authorities.

**United States:** The National Institute of Justice found that in prisons in the United States inmates had “a complex system of beliefs and norms on sexual conduct”, all of which had a strong influence on how prisoners behaved.<sup>137</sup> The research also showed that staff across the institutions “had a limited understanding of the cultural and social dynamics of inmate social life, which compromised their ability to react to prisoners’ concerns and to identify changes in prisoners’ behaviour”.<sup>138</sup> The prisoners were found to be “self-policing” the prison community to maintain order, and had formed protective social arrangements.

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137 Mark S. Fleisher and Jessie L. Krienert, “The Culture of Prison Sexual Violence”, United States Department of Justice, 2006, p. 15, <<https://www.ncjrs.gov/pdffiles1/nij/grants/216515.pdf>>.

138 *Ibid*, p. 18.

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**Georgia:** Experts draw attention to prisons in which violence between male inmates remains unchecked and unpunished by the authorities due to the presence of high-status prisoners (“thieves in law”) who act with impunity.<sup>139</sup>

**Moldova and Latvia:** The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) documented treatment of so-called degraded prisoners (i.e., those who are low in the prison hierarchy due to having a different sexual orientation or because they had suffered sexual abuse or committed sex offences)<sup>140</sup> in both countries.

**Latvia:** The CPT expressed concern at the level of inter-prisoner violence at one prison in Latvia, where “the prospect of becoming a victim of beatings, sexual assaults, extortion, and a range of other such abuse was a daily reality for many vulnerable prisoners”. In this facility, prisoners would repeatedly harm themselves in order to be transferred to a safer unit. The CPT noted, in particular, its concern over the situation of “the lowest caste of prisoners in the informal prison hierarchy, the so-called ‘untouchables’, who were frequently subjected to humiliation by other inmates and, indeed, staff. [...] such prisoners were often subjected to ritualistic sexual abuse by other prisoners (in return for small items such as cigarettes or tea)”.<sup>141</sup>

**Russian Federation:** Penal colonies in the Russian Federation are informally classified as either “red” (those in which the prison administration exercises authority) or “black” (largely administered by prisoners). Female colonies have always been described as “red”, and even “redder” than any male colonies.<sup>142</sup>

#### Examples of measures to change prison subculture



**Poland:** Authorities in Poland have taken several steps to minimize the influence of prison subculture and ensure security for all people

139 Information provided during a field visit to Tbilisi, Georgia, September 2016.

140 Note that the report did not specify if the particular prisoners were male or female, adults or juveniles.

141 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2007, Report to the Latvian Government on the visit to Latvia, para. 40.

142 Judith Pallot, Laura Piacentini and Dominique Moran, *Gender, Geography, and Punishment: The Experience of Women in Carceral Russia* (Oxford: Oxford University Press, 2012) <<https://ssrn.com/abstract=2240944>>.



### 3. BACKGROUND

deprived of their liberty in criminal justice facilities.<sup>143</sup> The 2016 Ordinance of the Director-General of the Prison Service requires prison staff to take measures to:

- Analyse the reasons prisoners subscribe to subcultures;
- Provide prisoners with alternative means to meet their needs of security and collective membership;
- Identify inmates who may be targets of harassment and aggression; and
- Minimize the role of leaders of informal subcultures by limiting their contact with other inmates.

Upon admission, prison staff in Poland assess the possibility that a prisoner may become a perpetrator or a victim of violence. Following this, they develop recommendations for how best to ensure security for those prisoners. They also inform potential perpetrators of the negative consequences that violating prison rules will have on their personal rehabilitation.

In the course of an inmate's term in prison, the correctional staff observe the individual's behaviour. Based on these observations, they assess the potential risk particular inmates may pose to staff members, to other inmates and to themselves.

**Russian Federation:** In 2002, the Russian public organization Man and the Law began to work with a particular juvenile detention centre known for humiliation of prisoners, violence and the presence of a juvenile criminal subculture consisting of a 36-level hierarchy. The subculture was maintained by the staff because they had not been given adequate training in methods for dealing with young offenders in a closed system. Over the course of a decade, Man and the Law worked to eradicate this subculture and encourage a climate in which SGBV would no longer be tolerated. One of the most effective elements of their approach was establishing and maintaining contact between the detention centre and civil society experts from the outside community. Some of the specific methods employed by Man and the Law included:

- Having a regular presence at the detention centre, either for training, events or conversations on such topics as tolerance;
- Insisting that criminal jargon, slang or profanities not be used by either staff or the juveniles;

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143 Information provided by Poland in response to ODIHR questionnaire.

### 3. BACKGROUND

- Ignoring the unwritten rules of the prison hierarchy and deliberately demonstrating respect towards juveniles who were deemed to be low-caste;
- Organizing joint trips outside the facility for staff and detainees, which made it possible to break down the “rules” of the prison subculture and to replace them with more positive relationships;
- Conducting educational seminars for staff on topics such as human rights, the rights of the child and non-violent solutions to conflict; and
- Holding a competition on protecting human rights at the detention centre. The competition lasted six months and had several categories, such as the most courteous staff member, the most successful juvenile unit, or the most successful juvenile in each unit. The prisoners and staff voted for the winners, which required the children to build trust and gain the confidence of their peers and the officials.

By 2012, an evaluation conducted among staff of the facility and the children indicated that no violence, including SGBV, was taking place.<sup>144</sup>

### 3.6. Magnitude of the problem

#### Key recommendations

- ✓ Places of deprivation of liberty should make all efforts to collect, analyze and process data on the incidence of SGBV.
- ✓ Data should be disaggregated, including by number of complaints received, patterns of abuse against particular groups and types of injuries observed.
- ✓ Follow-up action taken should be recorded.

One of the factors that complicate efforts to address SGBV in places of deprivation of liberty is the lack of data about its prevalence. The limited data can be explained by several factors, including the lack of official recognition of the problem, under-reporting by victims and others, and limited research dedicated to the subject.

Estimates of the prevalence of SGBV can be derived from different sources, including

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144 Information provided by Sergei Poduzov, Co-chairman, Man and the Law, December 2016.

### 3. BACKGROUND

surveys conducted among detainees or former detainees, from official administrative records or complaints submitted by detainees/prisoners to monitors, civil society organizations, domestic courts or international bodies.

The variety of sources, the differing methodologies for data collection and the lack of a common definition about what constitutes SGBV means the data tends to be imperfect. There is consensus among experts, however, that available data underestimates the prevalence of the problem.

Several OSCE participating States confirmed that they do not collect data on SGBV in places of detention. In others, the number of reported incidents ranged from under 30 per year to none in some years.

Replies from Bosnia and Herzegovina, Georgia, Sweden and Uzbekistan indicated there had been no reports of SGBV in recent years. In Italy, 35 cases of alleged sexual violence have been reported by detainees and/or prisoners since 2009. In Hungary, from 2011 to 2016, there were on average 29 cases of sexual violence reported by prisoners or identified by prison staff per year. In Estonia, Latvia, Lithuania, North Macedonia, Poland and Spain, there have been fewer than five reported incidents per year for several years. In Germany, where data are disaggregated by federal and state level places of deprivation of liberty (police custody or prisons), answers to questionnaires indicated that incidents range from zero to six reported per year.

Data from one country should not be compared with data from other countries because there is variation between states in how an incident is recorded and whether reports, substantiated complaints or cases that have been heard in court are counted.

The following sample statistics illustrate patterns of abuse that occur in places of deprivation of liberty. They also point to the complexity faced in recording SGBV and assessing whether it has taken place.

#### Examples of national surveys on SGBV in places of deprivation of liberty



**Canada:** Under the 2007 National Inmate Infectious Diseases and Risk-Behaviours Survey, less than one in five men (17 per cent) and one in three women (31 per cent) reported having engaged in sexual behaviour (defined as oral, vaginal or anal sex) during the preceding six months of their incarceration.<sup>145</sup> The survey did not distinguish between consensual and non-consensual sexual acts.

<sup>145</sup> See "Summary of Emerging Findings from the 2007 National Inmate Infectious Diseases and Risk-Behaviours Survey", Correctional Services of Canada website, <<http://www.csc-scc.gc.ca/research/005008-0211-01-eng.shtml#Toc253473351>>.

### 3. BACKGROUND

**Denmark:** In 2015, the Danish Prison and Probation Service conducted a survey of just over 2,000 remand prisoners and prisoners serving sentences (64 per cent of the total prisoner population).

Of the respondents, two per cent of male prisoners and nine per cent of female prisoners reported that they had been sexually assaulted by other prisoners, and four per cent reported that they had been sexually assaulted by prison staff, with no statistically significant differences between male and female inmates. Reported rates of sexual assault were higher in state prisons than in local prisons both when the perpetrators were other prisoners or staff.<sup>146</sup>

**Germany:** From 2011 to 2012, the Criminological Research Institute of Lower Saxony<sup>147</sup> conducted a study on violence in 33 German prisons in five federal states (Brandenburg, Bremen, Lower Saxony, Saxony and Thuringia). An anonymous questionnaire was used that was not seen by prison authorities. Of the 6,384 respondents, 78.1 per cent were adult males, 7.2 per cent adult females and 14.7 per cent juveniles of both sexes. The survey asked about several forms of violence that the respondents had experienced in the month before receiving the questionnaire, which revealed the following: 4.5 per cent of adult males, 3.6 per cent of adult females and 7.1 per cent of juveniles reported experiences of sexual violence.<sup>148</sup> Respondents were also asked about their behaviour in perpetrating violence. While a relatively high number reported having engaged in aggressive acts and physical violence, the overall response rate for those who reported engaging in sexual violence was one per cent.<sup>149</sup>

**United States:** The United States collects data on sexual victimization in places of detention using standardized national surveys. The following data are the most recently available concerning adult inmates:<sup>150</sup>

- Four per cent of state and federal prison inmates and 3.2 per cent of inmates in jails<sup>151</sup> reported experiencing one or more incidents

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146 Information provided by Denmark in response to ODIHR questionnaire.

147 See the website of the Kriminologisches Forschungsinstitut Niedersachsen e.V., <<http://en.kfn.de>>.

148 Bieneck and Pfeiffer, *op. cit.*, note 128, p. 11.

149 *Ibid.*

150 Data from Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12. National Inmate Survey, 2011–12, 2013 pp. 6, 17 and Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates, p. 2.

151 Prisons refer to long-term, centrally managed detention facilities, whereas jails refer to short-term detention facilities, often operated by local law enforcement agencies.

### 3. BACKGROUND

of sexual victimization by another inmate or staff member while in detention.

- From 2.9 per cent (prison) to 1.6 per cent (jail) of inmates reported an incident involving another inmate. From 2.4 per cent (prison) to 1.8 per cent (jail) of inmates reported an incident involving staff.
- Rates of prison inmate-on-inmate sexual victimization were higher among females than males (6.9 per cent compared with 1.7 per cent). Rates of staff sexual misconduct reported by male prison inmates were similar to those reported by females (2.4 per cent compared with 2.3 per cent).
- Prisoners identifying as ethnically white reported higher rates of inmate-on-inmate sexual victimization than ethnic minorities. The data also indicated higher rates of staff sexual misconduct towards minority groups than towards those identifying as white.
- Transgender adult inmates (in both prisons and jails) reported higher rates of sexual victimization (at the hands of other inmates and staff) than cisgender adult inmates.<sup>152</sup>

Data from the United States are also disaggregated by facility, so they provide important information about the prevalence of SGBV by institution.

Survey data differs markedly from administrative records of complaints or reports made by persons deprived of liberty. In contrast to the roughly four per cent of inmates who reported sexual violence in the United States, less than one per cent (0.29 per cent) of inmates in prisons, jails or other adult correctional facilities reported being the victim of SGBV to correctional authorities in 2006.<sup>153</sup>

Differences in national record-keeping processes impact the extent to which official data reliably reflects the prevalence of SGBV. In some states, for example, data may only be recorded on substantiated allegations. How cases of SGBV are charged may also obscure the full extent of SGBV. For example, in some countries, domestic criminal law only provides for rape of women. In other cases, SGBV may be charged as torture or staff misconduct, and in the case of a death in custody, lesser charges of sex crimes may be subsumed under the higher charge of homicide.

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152 The term “cisgender” refers to a person whose sense of personal identity and gender matches their birth sex.

153 Kim English, Peggy Heil and Robert Dumond, “Sexual Assault in Jail and Juvenile Facilities: Promising Practices for Prevention and Response, Final Report”, United States Department of Justice, 2011, p. 1.

## 3.7. Latency and non-reporting

SGBV is a latent problem in places of deprivation of liberty and is broadly under-reported. Studies of SGBV in the general community demonstrate that victims under-report for a number of reasons, all of which are likely to be magnified in closed incarceration settings. Additionally, there can be specific barriers to reporting such crimes in prisons and detention facilities.

A project interviewing 42,000 incarcerated women across 28 European Union (EU) Member States found that less than one-third of female victims of sexual violence by a non-partner had contacted law enforcement or any other service-providing organization to report the crime.<sup>154</sup>

There is no equivalent research about male victims, but evidence from smaller-scale studies suggests that men are even less likely than women to report sexual assault to the authorities. According to a survey carried out among adult victims of sexual assault in one community in the United States, for instance, only 13 per cent of men, compared with 19 per cent of women, reported incidents of rape to the police.<sup>155</sup>

Law enforcement and penitentiary staff may also be reluctant to report incidents of SGBV due to the potential backlash they could face from colleagues or detainees/prisoners. They may also fear being ostracized by other staff for blowing the whistle or out of fear of losing their jobs or being demoted as a result of reporting such activity. Some of the possible reasons SGBV is not reported are outlined in the following sections.

### Key recommendations

- ✓ Public officials, including policy- and lawmakers, should support and take part in public discussions about barriers to reporting SGBV in places of detention and investigating abuse.
- ✓ Clear measures should be established for prison managers or staff members who are aware of incidents of SGBV but fail to take action to prevent or respond appropriately. If such measures are already in place, their effectiveness should be reviewed.

### 3.7.1. Psychological barriers and stigma

Societal norms and gender stereotypes play a role in making victims of SGBV, especially of sexual violence, feel ashamed and humiliated. In the afore-mentioned EU-wide survey, shame or humiliation was one of the primary reasons women gave

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154 "Violence against women: an EU-wide survey, Main Results", European Union Agency for Fundamental Rights, 2014, p. 60.

155 English, Heil and Dumond, *op. cit.*, note 153, p. 7.

### 3. BACKGROUND

for not contacting the police after experiencing SGBV by a non-partner (26 per cent of respondents).<sup>156</sup> Detainees/prisoners feel the same reluctance to divulge information about sexual violence, and feelings of shame may be even more difficult to overcome when victims do not have access to the kinds of support services, such as trauma counselling, that may be available in the community. Fears of not being believed and society-induced guilt coupled with lack of confidence in the justice system influence reporting of violence and abuse.

#### Key recommendations

- ✓ Places of deprivation of liberty should create appropriate conditions and safeguards for survivors to report incidents of SGBV.
- ✓ Detainees and prisoners who know of incidents of SGBV should be provided the opportunity to report in a safe and confidential manner.
- ✓ All survivors of SGBV should be provided with appropriate and professional support and medical treatment, in co-operation, where possible, with specialist services in the community and NGOs.

Many misconceptions and stereotypes exist in the general community about the rape and sexual abuse of men and boys. Such notions may prevent male survivors from coming forward about abuse. Males may not report SGBV due to feelings of shame and guilt, as well as “fear of not being believed or of being denounced for what has occurred”.<sup>157</sup> Due to preconceptions about male sexuality, males who are victims of sexual violence at the hands of other men, in closed facilities and in other settings, are unwilling to report because of the stigma and shame attached to being a victim of sexual violence, especially in settings where homophobic attitudes are prevalent. “When men are sexually assaulted by other men, they may fear a ‘double stigma’ of being looked down upon as both a victim and a ‘homosexual’, even if the latter is not the case.”<sup>158</sup>

#### Key recommendation

- ✓ Prison administrations should encourage staff, prisoners, family members, service providers and relevant experts to participate in surveys, discussions and action groups focusing on the prevention of and response to SGBV in places of detention. They should also involve community organizations working with survivors to support awareness-raising initiatives.

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156 *Ibid.* p. 64.

157 Krug *et al. op. cit.*, note 92, p. 154.

158 Watson, *op. cit.*, note 133, p. 27.



#### **Case law example: *V.L. vs. Switzerland* (Committee Against Torture, 2007)**

In a complaint reviewed by the UN Committee Against Torture, the complainant, seeking asylum in Switzerland, alleged that she had been raped by three police officers in Belarus while being interrogated about her husband's political activities. The Committee determined that the beating and rape committed by the officers constituted sexual abuse within the definition of torture, even though it was perpetrated outside formal detention facilities.<sup>159</sup> The Committee also found that authorities in Belarus appeared to have failed to investigate, prosecute and punish the police for such acts.

The Committee elaborated on some of the factors that prevent torture victims from reporting their abuse, including those that have a gender dimension. “[T]he loss of privacy and prospect of humiliation based on revelation alone of the acts concerned may cause both women and men to withhold the fact that they have been subject to rape and/or other forms of sexual abuse until it appears absolutely necessary. Particularly for women, there is the additional fear of shaming and rejection by their partner or family members.”<sup>160</sup>

#### **3.7.2. Fear of retaliation and reprisals**

##### **Key recommendation**

- ✓ Prison administrations should inform all detainees/prisoners and staff about complaint mechanisms and ensure they can make complaints about SGBV in full confidentiality and without fear of retaliation or other negative consequences.

Fear of the perpetrator and of reprisals is one of the most common reasons that women, in the general community give for not reporting incidents of sexual violence. For example, the results of an EU-wide survey on violence against women suggest that fear of reprisals or of the perpetrator may be greater when the victim has been subjected to sexual violence as opposed to physical violence.<sup>161</sup> In closed facilities, the fear of retaliation and potential threats by the perpetrators of violence not to report are intensified. As noted in a study of prison culture in the United States, prisoners

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159 Committee Against Torture, Decision, Communication No. 262/2005, 22 January 2007, para. 8.10.

160 *Ibid*, para. 8.8.

161 “Violence against women: an EU-wide survey, Main Results”, *op. cit.*, note 154, p. 64.



who have been threatened with sexual violence face the dilemma of reporting the aggressor to the authorities and thereby risk being labelled a snitch, which could make them vulnerable to reprisals that “may be worse than the sexual aggression a potential victim seeks to avoid”.<sup>162</sup> The alternative to reporting would be “fighting or submitting to an aggressor”.<sup>163</sup> Juveniles who are detained with adults may have especially strong fears of retribution. Fear of reprisals also deters staff and witnesses to violence from reporting it.

#### 3.7.3. Other possible consequences of reporting

##### **Key recommendation**

- ✓ Ensure that measures to protect detainees/prisoners from violence do not lead to discrimination, stigmatization or a reduction in access to services and programmes. Protective segregation should only be instituted with the agreement of the prisoner/detainee concerned and should be subject to safeguards and regular review.

In addition to fear of retaliation and further violence, victims of SGBV in closed facilities may not report violence because they know that they may be punished for doing so. For instance, they may be placed in protective custody where they are not able to take part in general activities. They may also be transferred to another facility with worse living conditions; for women, this might “almost certainly mean that [they] would be taken further away from [their] home.”<sup>164</sup>

Persons deprived of their liberty may also not report abuse because they know that they will be subjected to invasive medical examinations and interrogation. Furthermore, when detainees/prisoners who have survived past trauma face threats of SGBV, their typical response is to fight, flee or freeze. These responses are often not properly understood by the authorities and can result in punishment.<sup>165</sup>

#### 3.7.4. The relationship between the victim and victimizer

Because the perpetrators of SGBV can be either other detainees/prisoners or staff, the particular relationship between the abuser and victim may present specific barriers to

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162 Fleisher and Krienert, *op. cit.*, note 137, p. 42.

163 *Ibid*, p. 42

164 *Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)* (London: Penal Reform International, 2013), p. 70.

165 Swavola, Riley and Subramanian, *Overlooked: Women and Jails in an Era of Reform*, Vera Institute of Justice (New York: August 2016) <<https://www.vera.org/publications/overlooked-women-and-jails-report>>, p. 14.

### 3. BACKGROUND

reporting. Research conducted in the United Kingdom, for instance, found that victims of SGBV who are prisoners rarely reported incidents to staff due, in part, to the fact that “victims and victimizer are not discrete groups, with those who victimized others often likely to be victims themselves”.<sup>166</sup>

Victims of SGBV at the hands of staff can find that their claims are not believed by the authorities. This may particularly be the case when the victim is male and the perpetrator is female.

When SGBV takes the form of coerced sex in return for a benefit, whether perpetrated by staff or another prisoner, the victim may be reluctant to report due to concern over losing “privileges” or for appearing to have been complicit in any infractions (e.g., if the victim is receiving special treatment or goods from prison authorities in return for sexual favours).

#### 3.7.5. Acceptance of SGBV as “part of punishment” or inevitable

Misconceptions about the dynamics of SGBV and victim-blaming attitudes also contribute to survivors’ feelings of guilt or feelings that they have played a role in their own victimization. Within the community at large, women might not report incidents of sexual violence because they feel they are at fault.<sup>167</sup> Detainees/prisoners might also feel that because they are deprived of their liberty they should accept abuse as part of their punishment.

Research conducted in prisons in the United States found that during orientation, new prisoners were told by staff that rape in prison was likely, that they would have to “learn how to handle it”, that “sexual violence was part of prison life” or “sexual victimization was part of their punishment”.<sup>168</sup> Such practices both increase an individual’s vulnerability and act as a deterrent to reporting abuse.

Those who have past experiences of SGBV may either not recognize abuse when it occurs or may be desensitized to the coercive elements. In the words of one staff member: “so many of these women [prisoners] have been victimized so long that they don’t think it is wrong [when they are sexually exploited]. They think it has something to do with them, that ‘maybe it was my fault.’”<sup>169</sup> Victims of past SGBV may be disempowered, reluctant to seek help or engage with prison services, and may even be anxious about their release from prison if they will be returning to an abusive partner.<sup>170</sup>

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166 Homel and Thompson, *op. cit.*, note 135, p. 6.

167 Violence against women: an EU-wide survey, Main Results, *op. cit.*, note 154, p. 64.

168 Fleisher and Krienert, *op. cit.*, note 137, p. 15.

169 Sexual Violence in Women’s Prisons and Jails, *op. cit.*, note 72, p. 8.

170 Morag MacDonald and Caren Weilandt, “Breaking the Cycle: Responding to the Needs of vulnerable women and female offenders”, presentation at the WHO/Health in Prison Programme Conference, Portlaoise, Ireland, 2-3 October, 2014.

#### **Key recommendations**

- ✓ Staff in places of deprivation of liberty, should make detainees/prisoners aware from admission to release that SGBV is not part of the culture of the facility and that incidents will be investigated and prosecuted.
- ✓ Policy- and lawmakers should support and participate in public discussions about SGBV in places of detention and identify the barriers to reporting/investigating abuse. Prison administrations should encourage staff, prisoners, family members, service providers and relevant experts to participate in surveys, discussions and action groups focusing on the prevention of and response to SGBV in places of detention. They should also provide safe spaces for them to do so.

#### **3.7.6. Absence of independent and effective complaint mechanisms**

The UN Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules) state that all prisoners should be provided with information about how to make complaints, that they should be able to complain at different levels of the prison administration and that safeguards should be put in place so they can make complaints safely and in confidentiality. The Nelson Mandela Rules also state that every complaint should be promptly dealt with and replied to without delay.<sup>171</sup>

In some places of detention, there may be no formal procedures for making complaints. In others, detainees/prisoners may not know how to complain or may lack the ability to do so.

The UN Special Rapporteur on torture has emphasized that “the mere existence of complaint mechanisms is not enough; they must be, and must be seen to be, independent and impartial, and should offer guarantees of effectiveness, promptness and expeditiousness”.<sup>172</sup>

#### **Key recommendations**

- ✓ All facilities should have written guidelines detailing how a detainee/prisoner can complain and the steps to be taken when a complaint of SGBV is received.

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171 United Nations Standard Minimum Rules for the Treatment of Prisoners (Rules 54-57).

172 SPT Report on visit to Brazil, CAT/OP/BRA/1, para. 32.

- ✓ Procedures on timelines for response/investigation, as well as measures to be taken to protect the safety and maintain confidentiality of the victim and any witnesses should be in place at all times.

#### 3.7.7. The view that reporting is pointless and/or a lack of trust in complaint mechanisms

When authorities are unable to prevent SGBV from occurring or fail to take action against perpetrators, victims may lose hope and fail to report, due to feelings that it is pointless or dangerous. If such violence is perpetrated by staff members, there may be a heightened sense that the system is complicit and that there is no possibility of remedial action being taken. Additionally, complaints of SGBV may simply be dismissed by staff. It has, for example, been reported that when complaints of rape are made by gay prisoners, staff have dismissed this as consensual sex.<sup>173</sup>

Gender and age may also be factors in whether victims of SGBV consider making a formal report; statistics on the number of general complaints made by women compared to men may provide a useful indication. In 2013–2014 in England and Wales, women and young people represented six per cent of the total prison population, yet made only 2.1 per cent of complaints to the prison and probation ombudsman on any matter. Among the reasons for the lower level of complaints among women and young people were a lack of confidence that complaints would be dealt with objectively and that making a complaint could negatively impact parole decisions.<sup>174</sup> It is important that prison administrations understand that a lack of reports from female detainees/prisoners, young people and other groups does not mean that SGBV is not occurring.

#### Key recommendations

- ✓ Clear measures should be established in relation to prison managers or staff members who are aware of incidents of SGBV but fail to take action to prevent or respond appropriately. If such measures are already in place, their effectiveness should be reviewed.
- ✓ When a complaint is made, but before an investigation is launched, those who are allegedly involved in SGBV should be suspended from any position of power.

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173 Atabay, *op. cit.*, note 95, p. 105, 107.

174 “Why do women and young people in custody not make formal complaints?”, Prisons and Probation Ombudsman for England and Wales, 2015, p. 6.

#### **3.7.8. Detainees/prisoners are unaware of their right to complain or how to make a report**

Detainees/prisoners have limited autonomy, so they rely on the custody/prison administration or other bodies to make reporting and complaint channels available to them. Individuals who are deprived of their liberty may not be aware of their right to be protected from violence and their right to redress if such violence has occurred. In addition, they may not report SGBV when it has occurred because they do not know the process for making complaints or cannot read or understand the information given to them.

#### **3.8. Consequences of sexual and gender-based violence**

The consequences of SGBV in places of deprivation of liberty are serious and far-reaching at both the individual and institutional levels. At its worst, SGBV can result in death, either immediate, as a result of health problems arising from the violence, or from suicide or drug and alcohol abuse stemming from the trauma.

For the survivor, SGBV is an egregious human rights violation that can have long-lasting physical and psychological consequences. Victims may suffer from severe physical injuries and face an increased risk of reproductive health problems and sexually transmitted diseases, including HIV. Women and girls are at risk of unwanted pregnancy, pregnancy complications and miscarriage. Victims of SGBV in closed settings may also harm themselves and display suicidal tendencies.

SGBV can have a serious impact on a survivor's emotional and psychological health. Victims of SGBV, regardless of where the violence was perpetrated, experience intense feelings of shame and guilt, as well as anger and shock. Long-term psychological consequences may include depression, guilt, anxiety, feelings of vulnerability, difficulty sleeping and concentrating, and panic attacks. Individuals in places of deprivation of liberty may be unable to access the support services that are available to survivors of SGBV in the community. Even if such services are available, either during the period of detention or in the form of post-release care, they are commonly oriented towards assisting women and girls. Services developed especially for male victims are rare, and so the long-term impacts of SGBV may be compounded for men and boys.

##### **Key recommendation**

- ✓ All survivors of SGBV should be provided with appropriate and professional support and medical treatment in co-operation, where possible, with specialist services in the community and NGOs. Such services should be in line with the quality of care available in the community.

### 3. BACKGROUND

SGBV in places of detention also has consequences for the institution and for society more broadly. It undermines security within detention facilities, leads to further violence and perpetuates gender inequalities, sexism and discrimination.

A violent institution is more difficult and more expensive to run, and the impact on staff morale, safety and stability should not be underestimated. For example, when specific places of deprivation of liberty develop reputations for violence and abuse, there is a strong disincentive for staff, especially female staff, to apply to work there or to remain in their positions.

The economic costs of SGBV can be equated with those associated with torture. As the APT has pointed out: “The economic costs of torture are enormous [...] The costs of lasting psychological damage to those who have been mistreated or spent time in solitary confinement are [borne] by public health systems and by employers in terms of lost productivity. In places where victims have been able to seek redress, the cost to the criminal justice system can be huge.”<sup>175</sup>

The prevalence of SGBV can also reduce the effectiveness and increase the costs of in-prison programmes aimed at reducing the spread of communicable illnesses, such as tuberculosis and sexually transmitted infections. Furthermore, violence in places of detention undermines rehabilitation and reintegration programmes.

SGBV affects not only individuals but also their families, communities and society as a whole. Moreover, when perpetrators of SGBV are permitted to act with impunity within closed facilities, it normalizes this type of gender-based violence. Tolerance of SGBV inside closed facilities can have direct links to how it is addressed in the community at large, implying that a high tolerance to it will not yield adequate responses in terms of victim assistance and public condemnation of perpetrators, let alone prosecution.

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175 “Understanding the true costs of torture”, APT.ch, <<http://www.appt.ch/en/blog/understanding-the-true-costs-of-torture/>>.



The background features a complex, abstract composition of overlapping organic shapes. The primary colors are a vibrant orange and a deep, dark blue. The orange shapes are layered, creating a sense of depth and movement. The dark blue shapes are more solid and angular, providing a strong contrast to the orange. The overall effect is a modern, graphic design.

## 4. RISK AND NEEDS ASSESSMENTS



# 4. RISK AND NEEDS ASSESSMENTS

## Key recommendation

- ✓ Relevant ministries, policymakers and lawmakers should develop or adapt assessment tools that include clear criteria on identifying risks that someone might become a victim or perpetrator of SGBV, in consultation with relevant specialists, including from civil society, where possible.
- ✓ The administration of places of detention should conduct full assessments of the risks of SGBV that each detainee/prisoner may present to themselves, staff, other detainees/prisoners and visitors, and allocate them accordingly.
- ✓ Assessment teams should be gender-balanced and include experts on SGBV if possible.

## 4.1. The use of assessments

Carrying out needs and risk assessments is a core competency of any law enforcement or penal institution. Such assessments are crucial for identifying signs of vulnerability or aggression, providing effective treatment and rehabilitation, planning reintegration programmes and ensuring everyone's security. The Nelson Mandela Rules and the Bangkok Rules call for individualized classification of detainees/prisoners, including individualized and repeated risk and needs assessments. This will ensure that their individual needs, as well as security requirements, can be addressed appropriately and avoid over-classification.<sup>176</sup> The Bangkok Rules specifically state that risk and needs assessments should be gender-sensitive.<sup>177</sup>

Effective needs and risk assessments distinguish between different types of need/risk and consider the individual, including the less obvious aspects of their personality or past histories. Effective assessments are also dynamic and flexible to take into consideration changes in circumstances over time.

A number of professional groups may make use of needs and risk assessments, including police or prison staff, probation officers and therapists or service providers.

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<sup>176</sup> *Guidance Document on the Nelson Mandela Rules – Implementing the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners*, ODIHR and Penal Reform International (Warsaw: 2018) <<https://www.osce.org/odihr/389912>>, page 11, para 3.

<sup>177</sup> Bangkok Rules, Rule 40 and Rule 41.

## 4. RISK AND NEEDS ASSESSMENTS

The Council of Europe recommends that a distinction be made between the risk an offender poses to the outside community and while serving a sentence; therefore, the two forms of risk should be evaluated separately.<sup>178</sup> This compilation looks narrowly at the process of identifying and managing the risk that a detainee/prisoner will perpetrate SGBV during their sentence.

Risk and needs assessments should be incorporated into approaches to police pre-arrest, arrest and detention processes; judicial decision-making about pre-trial detention and custodial sentences; staff training and dynamic security. Risk and needs assessments should take place at multiple points during a person's incarceration at a prison or detention facility. They should be conducted by professionals with knowledge about, and experience in, the subject matter.

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### Stages where risk and needs assessments should be carried out:

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<b>Pre custody/arrest</b>	<ul style="list-style-type: none"><li>* Arresting officer</li><li>* Custody officer</li><li>* Prosecutor (supervisory function)</li><li>* Court (reviewing arrest)</li></ul>
<b>Custody induction</b>	<ul style="list-style-type: none"><li>* Custody officer</li><li>* Prosecutor</li><li>* Court</li><li>* Additional staff (such as healthcare providers, psychologists)</li></ul>
<b>Pre trial detention admission</b>	<ul style="list-style-type: none"><li>* Detention officer</li><li>* Prosecutor</li><li>* Court (review of pre trial detention)</li><li>* Additional staff (such as health care providers, psychologists)</li></ul>
<b>Imprisonment</b>	<ul style="list-style-type: none"><li>* Prison staff</li><li>* Prosecutor</li><li>* Court (pre sentencing, imprisonment oversight, release conditions)</li><li>* Additional staff (such as healthcare providers, psychologists)</li></ul>

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178 Council of Europe, Recommendation CM/Rec(2014)3 of the Committee of Ministers to member states concerning dangerous offenders, 2014.

#### 4. RISK AND NEEDS ASSESSMENTS

Risk and needs assessments should take into consideration the factors that put individuals at risk.

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#### **Some general good practices for carrying out risk assessments and preventing SGBV include:**

- \* Considering the risk to potential victims, as well as the risk of individuals becoming perpetrators of SGBV;
- \* Assessing the risk of SGBV perpetrated by or against prison staff, service providers and prison visitors;
- \* Using a range of information sources, such as criminal history and the nature of the offence, history of involvement in inter-prisoner violence and personal history, including victimization, health issues, social background, emotional maturity, substance abuse or dependency of the inmate;
- \* Avoiding making assumptions based on stereotypes about individuals or groups. Assessments should be based on objective findings and empirical knowledge about groups with special needs or specific factors that increase vulnerability or risk of perpetrating violence. Using standardized instruments for assessing risk is crucial;
- \* Considering information about the detainee's own perceptions of risk and vulnerability and taking this information into consideration;
- \* Communicating the results of risk assessments to all relevant staff during custody, transfers and before release on a need-to-know basis;
- \* Providing detainees and prisoners with information about the conclusions of the risk assessment and giving them the opportunity to present their feedback;
- \* Reviewing the results of risk assessments and updating them periodically;
- \* Giving staff comprehensive and standardized training in how to conduct risk assessments. It is essential that all staff charged with making risk and needs assessments, both within and outside the criminal justice system, base their assessments on the same set of criteria;
- \* Evaluating the effectiveness of risk assessment methods; and
- \* Evaluating the instruments for carrying out risk assessments "in order to identify cultural, gender and social biases".<sup>179</sup>

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179 *Ibid.*

Risk and needs assessments should be conducted as soon as possible after admission to a detention facility, but the process should also be ongoing to respond to changes in circumstances and behaviours and to “allow for a dynamic re-assessment of the offender’s risk”.<sup>180</sup>

### Examples of measures used to address risk



**Canada:** The Correctional Service of Canada Commissioner’s Directive on Inmate Accommodation (CD 550) prioritizes single-occupancy cells for prisoners and requires that an assessment be conducted if it is necessary to place two inmates in a shared cell. The assessment consists of nine criteria: the nature and gravity of the offence, compatibility, vulnerability, predatory/permissive behaviour, security considerations, medical information, criminal profile, psychological information and security threat group.<sup>181</sup>

**Czech Republic:** The prison service’s internal regulations govern how risk assessments are conducted.<sup>182</sup> According to the regulations, the heads of departments responsible for pre-trial custody and prison sentences assign prisoners to several categories: “prisoners identified as possible victims of violence, possible perpetrators of violence, persons with significantly reduced bodyweight, persons of obvious low mental capacity, so-called other specified persons and other specified persons characterized by their profession”.<sup>183</sup> To classify detainees, special attention is paid to the prisoner’s current conduct, as well as information about their personal and criminal backgrounds, e.g., their “degree of self-control, physical condition, severity of committed crime, manner of its committing and resulting consequences”.<sup>184</sup>

**Georgia:** Georgia’s Ministry of Corrections has a system to assess and identify risk in the context of prisoner placement.<sup>185</sup> Formerly, prisoners were assigned to a facility according to the type of crime

180 Council of Europe, Recommendation CM/Rec(2014)3 of the Committee of Ministers to member states concerning dangerous offenders, 2014.

181 The full criteria for determining inmate placement from CD 550 is available at <<http://www.csc-scc.gc.ca>>.

182 The specific regulation is Directive of the Director-General of the Prison Service of the Czech Republic No. 12/2012 on the avoidance, prevention and timely detection of violence among accused, convicts and inmates.

183 Šárka Blatníková, “Nebezpečnost a násilí ve vězeňském prostředí”, Institute for Criminology and Social Prevention, 2016, p. 96.

184 *Ibid.* p. 97.

185 In 2015, the Ministry of Corrections approved Order No. 70, which establishes the criteria for placing inmates in particular facilities.

#### 4. RISK AND NEEDS ASSESSMENTS

they had committed. Now, prisoners are assessed using an individual approach and according to seven criteria to determine their placement in low-risk, semi-open, high-risk or closed facilities. In order to place a convicted person in a closed or high-risk facility, the authorities consider, *inter alia*, the following criteria:

- The threat posed by the convict;
- The convict's personality;
- The severity of the crime committed and relevant outcome of the crime;
- The convict's conduct in prison with other inmates and prison staff;
- Compliance with prison regulations; and
- Participation in rehabilitation or resocialization programmes.<sup>186</sup>

The assessment is carried out by a multidisciplinary team, and the prisoner has the right to appeal against the specific risk type they are assigned. The new system also incorporates long-term monitoring and supervision.<sup>187</sup>

Hungary: On the basis of the Penal Code and Order 16/2014 of the Minister of Justice, Hungary introduced a risk handling and analysis programme to help further the reintegration of inmates. In addition to risks of suicide, escape, aggressive behaviour and drug use, inmates are also assessed in terms of predictions about whether they will likely occupy a high or low position in the hierarchy of inmates. Inmates who receive a medium- or high-risk classification can be enrolled in training to reduce and manage their aggression.<sup>188</sup>

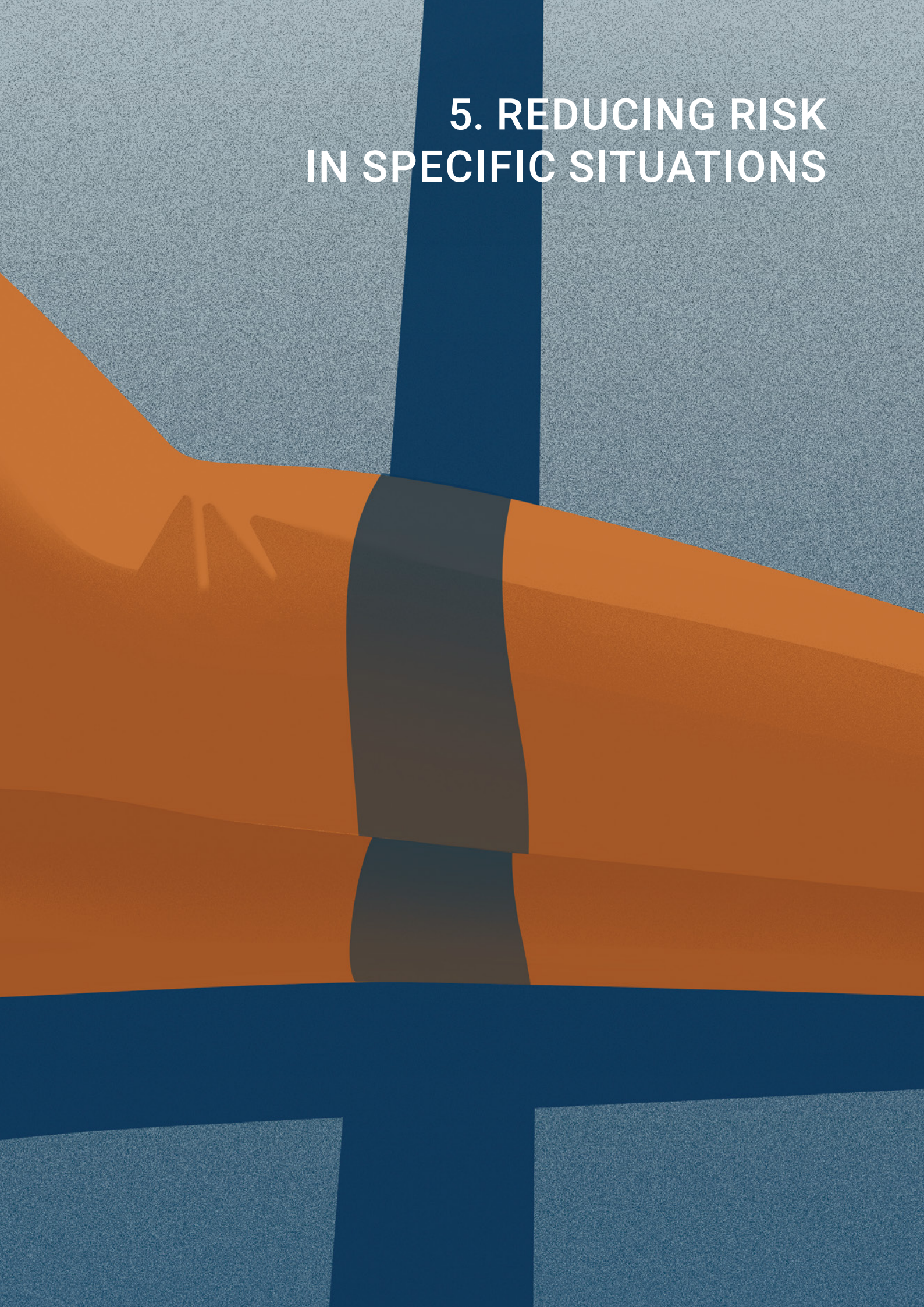
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186 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia, 1 December 2015, A/HRC/31/57/Add.3, para. 81.

187 Information provided during field visit to Tbilisi, Georgia, September 2016.

188 Information submitted by Hungary to ODIHR questionnaire.

# 5. REDUCING RISK IN SPECIFIC SITUATIONS

The background features a complex geometric composition. A central vertical band of dark blue runs from top to bottom. To its left, a large, irregular shape in a vibrant orange color extends from the middle towards the top-left corner. This orange shape contains a faint, light-colored silhouette of a hand with fingers spread. The remaining areas are filled with various shades of blue, including a lighter, textured blue and a darker, solid blue, creating a layered and abstract visual effect.

# 5. REDUCING RISK IN SPECIFIC SITUATIONS

Not only are detainees/prisoners in situations of heightened vulnerability, but the risks can increase in particular circumstances and for specific groups of detainees or prisoners depending on the case. This section outlines several scenarios in which detainees/prisoners may be especially vulnerable and provides examples of measures that can be adopted to mitigate the risk of SGBV taking place.

## 5.1. Interactions with police: stop, arrest and detention

SGBV can occur in various situations when individuals interact with law enforcement officials. The period of time between a person being arrested and before being formally placed in police custody is one in which individuals are at heightened risk of SGBV. Reports of police using or allowing violence against people who have been stopped, unlawfully detained, transported or questioned in police stations reveal the need to put in place legal safeguards to protect individuals deprived of their liberty.<sup>189</sup> In contexts where security sector institutions are not effectively overseen, lack accountability or are not reflective of the society (including in women’s representation as officers), women may be abused by male police officers who will rely on the victims’ fear of being punished for reporting, especially if coming from a disadvantaged background. Men may be exposed to situations of vulnerability by being placed with other detainees who may abuse them sexually or exercise other forms of coercion.

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment suggests the importance of states focusing on situations in which individuals may be powerless, both “classically in detention situations, where the detainees cannot escape or defend [themselves]” but also in other situations, such as political demonstrations, “when a person is not able to resist the use of force anymore, e.g. [they are] handcuffed, in a police van, etc.”<sup>190</sup>

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189 *Monitoring Police Custody: A practical guide* (Geneva: Association for the Prevention of Torture, 2013), <[https://www.apt.ch/content/files\\_res/monitoring-police-custody\\_en.pdf](https://www.apt.ch/content/files_res/monitoring-police-custody_en.pdf)>; “Safeguards in the First Hours of Police Detention”, Convention against Torture Initiative, 2017, <<https://cti2024.org/content/docs/CTI-Safeguards-final%20rev.pdf>>.

190 Report of the UN Special Rapporteur on torture, 15 January 2008, A/HRC/7/3.

## 5. REDUCING RISK IN SPECIFIC SITUATIONS

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment sets forth the safeguards that must be in place when an individual is held in any type of detention, such as providing information about the grounds for arrest and any charges, the place of custody, the detainee's rights and how to protect those rights, as well as their entitlement to contact family members and to receive legal counsel.<sup>191</sup>

### **Example of guidance relevant to preventing SGBV in police custody**



The Authorised Professional Practice, developed by the College of Policing, the professional body for policing in the United Kingdom, includes a comprehensive detention and custody index that provides guidance for police officers on how to implement the law and standards for dealing with suspects and detainees.

One of the core principles for improving the safety of detention is the use of appropriate, authorized detention for no longer than is necessary while ensuring that officers and staff treat detainees “in a way that is dignified and takes account of their human rights and diverse individual needs”. Custodial staff should also be “respectful in their day-to-day working and [...] aware of and responsive to any particular risks and vulnerabilities” faced by inmates.

The detention and custody index provides instructions on a number of topics relevant to the prevention of SGBV, such as assessing vulnerability at the point of arrest and when arriving at the police station, dealing with violent and vulnerable detainees, placement of detainees when booked into custody and how to manage risk in the custody suite, “taking into consideration the needs and safety of all those within the custody environment”.<sup>192</sup>

Other specific measures authorities can take to prevent SGBV include supporting diversion for specific groups of people, such as children and persons with mental-health needs, from custody to health or social services.<sup>193</sup>

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191 “Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment”, Office of the United Nations High Commissioner for Human Rights, 1988, <<https://www.ohchr.org/en/professionalinterest/pages/detentionorimprisonment.aspx>>.

192 The full Detention and Custody Index of the Authorised Professional Practice is available at <<http://www.app.college.police.uk/detention-and-custody-index/>>.

193 Her Majesty's Inspectorate of Constabulary (HMIC) has conducted an analysis of vulnerability in police custody and recommends, among other measures, that the police, along with relevant health- and social-care partners, develop “a joint, multi-agency approach to training for frontline staff, including those working in custody, on practical ways to support diversion from custody, vulnerability assessment and risk management”. See “The welfare of vulnerable people in police custody”, HMIC, 2015, p. 125.



## 5.2. Investigation stage: interviews and interrogation

### Key recommendation

- ✓ Existing interrogation methods and practices should be reviewed in order to prevent SGBV, including by ensuring that there are clear procedures on interrogation methods.
- ✓ Protections against SGBV should be applied during the transfer of detainees/prisoners, including when non-state agencies are responsible for transportation. The staff of these agencies should receive appropriate training and must be held equally accountable for acts of SGBV that they commit.
- ✓ Full records of all interrogations should be maintained, including information about the identity of all those present. All officials involved in interrogations should receive proper training on interviewing suspects, including in relation to the prohibition of SGBV

Suspects can be at high risk of SGBV during the investigation stage, especially during interrogations to obtain confessions from suspects or information from witnesses. The UN Special Rapporteur on torture explains that the process of questioning suspects is “inherently associated with risks of intimidation, coercion and mistreatment.”<sup>194</sup> Individuals in detention are in situations of increased risk, especially during “apprehension and the early stages of custody, when the authorities exerting control over the fact and conditions of detention, and conducting the investigation, are the same.”<sup>195</sup>

Principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person”, and that “no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.”<sup>196</sup>

The UN Special Rapporteur on torture has advocated for the development of a protocol and universal set of standards for non-coercive interviewing methods and procedural safeguards that should be applied to all interviews undertaken by law enforcement

194 Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 August 2016, A/71/298, para. 8.

195 *Ibid.*

196 Principle 21, Body of Principles for the Protection of All Persons Any Form of Detention or Imprisonment.

## 5. REDUCING RISK IN SPECIFIC SITUATIONS

officials and others with investigative mandates. Among the recommended safeguards for all detainees, the protocol should include specific provisions for groups that are “more vulnerable during questioning, [...] among others, children, women and girls, persons with disabilities, persons belonging to minorities or indigenous groups and non-nationals, including migrants (regardless of migration status), refugees, asylum seekers and stateless persons”.<sup>197</sup>

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### Safeguards that should be in place to ensure that detainees are not subjected to SGBV in the form of torture during investigations:

- \* Prompt identification of the needs of the particularly vulnerable, including gender- and age-specific needs, and instituting safeguards that reflect these considerations;
- \* Strict regulations of the procedure for bringing a detainee to an interview or interrogation;
- \* Provision of information to a detainee about their right to legal counsel and early access to legal assistance or legal aid;
- \* The right for a detainee to inform a third party about their detention and whereabouts;
- \* Access for a detainee to a doctor and medical examinations;
- \* Ensuring that the detainee has contact with family members;
- \* Prompt judicial oversight in the form of judicial review of the legality of the arrest and detention;
- \* Investigation into all allegations of torture and/or SGBV; and
- \* Regular review of interrogation methods and practices to prevent torture and SGBV.<sup>198</sup> This should include prosecutorial oversight of investigation methods used by police.

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### Example of early access to legal counsel



**United Kingdom:** Custody officers are instructed to check that a detained person has requested legal representation and whether

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197 Interim Report 2016, *op. cit.*, note 194, para. 79.

198 Article 6, UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

they have access to legal representation before handing them over to an interviewing officer; a custody record must be maintained and any irregularities noted.<sup>199</sup>

### 5.3. Body searches

#### Key recommendations

- ✓ Policy- and lawmakers should establish a regulatory framework on the conduct of body searches in accordance with human rights standards, including the principles of legality, necessity and proportionality. The development and use of alternative screening methods should be encouraged.
- ✓ Staff of places of deprivation of liberty should consistently implement the provisions of the Bangkok Rules for searches of women.
- ✓ Specific policies should be developed regarding body searches of LGBTI individuals in consultation with LGBTI detainees/prisoners and relevant expert groups where possible.
- ✓ All staff in places of detention should be properly trained regarding the criteria and procedures for conducting body searches, including in terms of gender sensitivity.

The term “body search” refers to three distinct procedures: pat-down or frisk searches, which are performed over clothing; strip searches, which involve the removal or re-organization of some or all clothing in order to permit a visual inspection of all parts of the body, but without physical contact; and body-cavity searches, also known as invasive or intimate searches, which are physical examinations of body orifices, such as the vagina or anus.<sup>200</sup> Women are particularly vulnerable during body searches, especially strip and body-cavity searches.

The Nelson Mandela Rules state that searches, including body searches, should be “conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.” Body searches must “not be used to harass, intimidate or unneces-

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199 Section 4.2, Interviews. Detention and Custody Index, <<https://www.app.college.police.uk/detention-and-custody-index/>>.

200 For more detailed definitions, see “Fact Sheet: Body searches: Addressing risk factors to prevent torture and ill-treatment,” APT/PRI, 2015.

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sarily intrude upon a prisoner’s privacy,” and intrusive searches should only be used when absolutely necessary.<sup>201</sup> The Bangkok Rules add that searches of women and girls should “only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.”<sup>202</sup>

Rule 60 of the Nelson Mandela Rules also provides that “search procedures for visitors must not be degrading and be governed by principles at least as protective” as for prisoners.<sup>203</sup>

Authorities should keep records of searches and document the reasons why searches are carried out, the identities of who conducted them and any results of the searches.<sup>204</sup> Places of deprivation of liberty should develop written policies that outline the circumstances when searches are allowed, including searches of prisoners, visitors and of staff members.

Body searches can amount to torture when they are carried out with the intention of inflicting severe mental or physical pain or suffering on the person being searched. The risk of torture and other ill-treatment is particularly high when searches are conducted systematically, when not strictly necessary, when they disproportionately target particular groups of prisoners and when carried out by a member of the opposite sex.<sup>205</sup>

In some countries, female prisoners undergoing searches are “required to undress in public, to squat and to undergo intimate body searches, including invasive probing of the vagina and anus.”<sup>206</sup> According to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, these types of inspections “can constitute sexual violence and must therefore be prohibited.”<sup>207</sup>

Staff members in places of deprivation of liberty must not only respect the prohibition on torture and other ill-treatment but must also recognize the heightened vulnerability of particular groups during body searches. For instance, those who have experienced gender-based violence in the past may suffer renewed trauma and acute humiliation as a result of body searches. While searches can be humiliating for all individuals subjected to them, the additional factors of male dominated power relations and socialized ideas about the female body as well as the greater likelihood of previous experience of SGBV as a woman means that the impact of searching women

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201 Nelson Mandela Rules, Rules 50-52.

202 Bangkok Rules, Rule 19.

203 Nelson Mandela Rules, Rule 60.

204 Nelson Mandela Rules, Rule 51.

205 *Guidance Document on the Nelson Mandela Rules, op. cit.*, note 176.

206 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “Prevention of torture and ill-treatment of women deprived of their liberty”, 18 January 2016, CAT/OP/27/1, para. 27.

207 *Ibid.*

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is more profound and more likely to trigger previous trauma. Body searches can also be especially problematic for LGBTI persons, “especially if the person [...] is openly lesbian, gay or bisexual, or if the person cross-dresses or has undergone/is undergoing treatment for gender reassignment.”<sup>208</sup>

Prison staff should ask themselves what the specific purpose of each search would be, and which method would be the least intrusive to achieve this purpose. They should consider whether they are making their determination based on the specific risk posed and scrutinize whether their action may be influenced by stereotypes linked to particular groups of prisoners.<sup>209</sup>

Policies should also take into consideration the cultural and religious diversity within the target population and make reasonable adjustments to ensure that all individuals can comply with security procedures. Institutions should consult directly with minority ethnic and religious groups to come to an understanding of what is culturally appropriate rather than applying the same procedures to everyone.

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### **Good practices to prevent traumatization during body searches:**

- \* Body searches should be carried out in accordance with the principles of proportionality and necessity;
- \* Searches should be used only as a means of last resort and alternative screening methods that replace body searches should be in place;
- \* Prison officials should properly and consistently assess whether a search is necessary, how it should be carried out and by whom;
- \* Gender-sensitive and human-rights-compliant policies on permissible and prohibited conduct during body searches should be in place, and all staff should receive training on such policies;
- \* All searches must be carried out in such a way that full respect for the dignity and privacy of the individual being searched is guaranteed;
- \* Searches should take place in a private room where the individual being searched cannot be seen by other staff or detainees/prisoners;
- \* Detainees/prisoners should be offered the opportunity to disclose or hand over any concealed contraband before a search is conducted;
- \* Detainees/prisoners should not be required to fully undress, and strip searches should be carried out in stages (undressing above the waist and then below the waist); and

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208 Jean-Sébastien Blanc, “LGBTI persons deprived of their liberty: a framework for preventive monitoring”, APT/PRI, 2013, p. 9.

209 *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 176.

## 5. REDUCING RISK IN SPECIFIC SITUATIONS

- \* While staff of the same gender as the detainee/prisoner should conduct body searches, in the case of LGBTI individuals, the detainee/prisoner should be given the choice of being searched by a male or female staff member.

### Examples of regulating the use of body searches



**Austria:** The Federal Ministry of Justice has evaluated search practices in the penitentiary system for a handbook on body searches that will be based on respect for human dignity.<sup>210</sup>

**Georgia:** According to the 2018 Report of the Public Defender of Georgia<sup>211</sup>, the use of full body searches through strip-searches remains a significant problem when women enter the facility and are requested to make squats even if they have menstrual period. This problem was observed in the previous years too. In 2016, a scanner was installed in the penitentiary establishment N5 and respective amendments were introduced into the statute of the establishment with regard to the full search of prisoners, according to which a detainee/prisoner is authorized to personally select a form of full search (strip-search or scanning). These rules, in accordance to the statute, regulate the procedures when accepting individuals to the establishment, when leaving, returning and other instances regulated under the statute. However, according to the Defender's report, when women detainees/prisoners are first placed in the establishment, they are both scanned and strip-searched, as well as being requested to squat, thus the problem still needs to be fully addressed.

**Spain:** Specific instructions establish standards for police forces when carrying out body searches in order to protect the rights of individuals in police custody. The instructions stipulate that searches must be carried out in the presence of two officers, if possible, and by an officer of the same sex, respecting the sexual identity of the detainee, particularly with regard to transsexual people and should be pat-down searches.<sup>212</sup> Searches that require the removal of clothing are only to be used when several criteria are met, including that

210 Annual Report on the activities of the Austrian National Preventive Mechanism 2015, International Version, p. 115.

211 State of Women and Juvenile Prisoners in Georgia (2018), page 20, <<http://www.hridc.org/admin/editor/uploads/files/pdf/hrcprep2018/STATE%20OF%20WOMEN%20AND%20JUVENILE%20PRISONERS%20IN%20GEORGIA.%202018.pdf>>.

212 Instrucción 12/2007 de la Secretaria de Estado de Seguridad Sobre los Comportamientos Exigidos a los Miembros de las Fuerzas y Cuerpos de Seguridad del Estado para Garantizar los Derechos de las Personas Detenidas o Bajo Custodia Policial, issued by the Secretary of State for Security to the National Police and the Civil Guard.

the search has been authorized by the police officer in charge and there is a reasonable justification for doing so. Searches must be conducted in maximum privacy.<sup>213</sup> The reasons and justifications for a strip search must be noted in a detainee's custody records.<sup>214</sup>

### Examples of gender-sensitive policies on body searches of women



**United Kingdom:** In 2006, the Home Secretary commissioned a special review of women with particular vulnerabilities in the criminal justice system. The resulting report (the *Corston Report*) contained recommendations on the use of strip searches, which the study identified as a part of “entrenched prison routine.”<sup>215</sup> The *Corston Report* noted that the regular, repetitive and unnecessary use of strip-searching is “humiliating, degrading and undignified for a woman and a dreadful invasion of privacy. For women who have suffered past abuse, particularly sexual abuse, it is an appalling introduction to prison life and an unwelcome reminder of previous victimization. It is unpleasant for staff and works against building good relationships with women, especially new receptions.”<sup>216</sup> The report recommended that strip-searches in women's prisons be reduced “to the absolute minimum compatible with security” and that the prison service should pilot the use of ion scanning machines to trace the presence of narcotics or other contraband.<sup>217</sup> Since the *Corston Report* was published, the practice of routinely strip-searching women has ended.

**Russian Federation:** A women's remand prison in Russia used to have a policy of performing an internal physical search on every woman prisoner upon admission. The practice was justified as a security measure to prevent illegal or forbidden articles from being brought into the prison, but in reality it was used “as a means of subduing new prisoners and of impressing upon them from the out-

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213 Instrucción Número 19/2005 de 13 de Septiembre del Secretario de Estado de Seguridad Relativa a la Práctica de las Diligencias de Registro Personal por las Fuerzas y Cuerpos de Seguridad.

214 Instrucción 20/2015 de Estado de Seguridad, por la que Se Aprueba El “Protocolo De Actuación en las Áreas de Custodia de Detenidos de Las Fuerzas y Cuerpos de Seguridad del Estado.

215 “The Corston Report”, Home Office, 2007, p. 31.

216 *Ibid.*

217 *Ibid.*, p. 5.

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set the need to conform.”<sup>218</sup> Working with partners from the United Kingdom, the Russian authorities decided to stop using invasive searches as a matter of course and to use them only in individual cases where there was an identified security need.

### Examples of gender-sensitive policies on body searches of transgender individuals



**France:** The National Preventative Mechanism has issued guidance on the procedures that should be used for body searches of prisoners who have begun sex reassignment treatment regardless of whether the individual’s sex has been legally changed. Searches should be undertaken with caution and under conditions that ensure respect for the dignity of the person being searched. Once the irreversibility of the gender reassignment process has been medically established by a multidisciplinary team, searches should be carried out in conditions that respect the dignity of the detainee and of the staff, by officers of the same sex as the reassigned sex of the detainee and by officers who have been sensitized to the issue by management.<sup>219</sup>

## 5.4. Transit and transfer

### Key recommendation

- ✓ Protections against SGBV should also be applied during the transfer of detainees/prisoners, including when non-state agencies are responsible for transportation. The staff of these agencies should receive appropriate training and must be held equally accountable for acts of SGBV that they commit.

Detainees/prisoners are regularly transferred from places of deprivation of liberty to court, between institutions or to medical facilities. During the transfer period, there is an increased risk of staff misconduct or for SGBV to be committed by other detainees/prisoners who may not otherwise come into contact with each other. This risk may be heightened when non-state agencies are responsible for the transportation of

218 “Gender and SSR Toolkit: Penal Reform and Gender,” ODIHR/ICPS/INSTRAW/Geneva Centre for the Democratic Control of Armed Forces, 2008, p. 8, <<https://www.osce.org/odihr/30683?download=true>>.

219 J.-M. Delarue, “Avis du 30 juin 2010 relatif à la prise en charge des personnes transsexuelles incarcérées”, Journal Officiel de la République Française, 25 July 2010, <[https://www.legifrance.gouv.fr/jo\\_pdf.do?numJO=0&dateJO=20100725&numTexte=32&pageDebut=&pageFin=>](https://www.legifrance.gouv.fr/jo_pdf.do?numJO=0&dateJO=20100725&numTexte=32&pageDebut=&pageFin=>)>.



## 5. REDUCING RISK IN SPECIFIC SITUATIONS

detainees/prisoners. Trans women in particular may be exposed to various forms of violence (verbal, physical, and sexual) from fellow inmates during transfers. Therefore it is important that adequate protective measures are put in place during transfer, but should neither prevent detainees from being brought to a court or hospital, nor delay transfers to another facility<sup>220</sup>.

Institutions need to have clear policies in place that regulate the conditions of transfer in order to minimize the risk of abuse. These policies should explicitly address SGBV in a gender-sensitive way. Detention safeguards regarding the separation of prisoners and appropriate staffing should equally apply during transfer, including the separation of men and women, juveniles and adults. Women should only be supervised by other women officers, and the transfer of transgender and intersex individuals must be undertaken with special care and sensitivity.

The conclusions arrived at from individual risk assessments should inform decisions about transferring specific detainees/prisoners separately or together. Detainees/prisoners must be able to communicate with their family and lawyers or to inform other third parties about the transfer.

### 5.5. Accommodation arrangements

In many jurisdictions, closed facilities are overcrowded. This is a problem that, in itself, leads to an increased risk of stress, mental-health problems and violence, including SGBV. Based on monitoring of all prisons in Latvia, for example, the ombudsman concluded that violence, including SGBV, is more common in large facilities in which up to 40 inmates can be housed together.<sup>221</sup>

Overcrowded, under-resourced facilities are also more difficult to manage, and authorities may struggle to meet the basic needs of individuals, including the provision of healthcare, food and water. In addition, overcrowding can impact the delivery and success of rehabilitation, education and training programmes, all of which can contribute to a reduction in violence.

The Nelson Mandela Rules stipulate that if sleeping accommodation is in individual cells or rooms, “each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.” Additionally, if dormitories are used, “they shall be occupied by prisoners carefully selected as being suitable to associate with one

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220 *Towards the effective protection of LGBTI Persons Deprived of Liberty*, *op. cit.*, note 115, p. 60.

221 Presentation by Ieva Krasovska, lawyer with the Office of the Ombudsman of the Republic of Latvia, Preventing and addressing sexual and gender-based violence in closed facilities, Practitioners’ Meeting, ODIHR, 17-18 October 2016, Warsaw.

## 5. REDUCING RISK IN SPECIFIC SITUATIONS

another in those conditions”, and regular supervision is required.<sup>222</sup> Men and women, as well as adults and minors, should always be accommodated separately. According to the CPT, “transgender persons should either be accommodated in the prison section corresponding to their gender identity or, if exceptionally necessary for security or other reasons, in a separate section which will best ensure their safety. If accommodated in a separate section, they should be offered activities and association time with the other prisoners of the gender with which they self-identify.”<sup>223</sup> Rule 7.a. of the Nelson Mandela Rules specify that prison file management should “enable the determination of the prisoners’ unique identity, respecting his or her self-perceived gender”. This provision should facilitate the placement of transgender detainees in facilities – whether male or female – of their choice. According to the Association for the Prevention of Torture, even in facilities where allocation is dependent upon self-identified gender, it is essential that placement decisions have the consent of the detainees concerned, as some may prefer to be housed in facilities for their birth-assigned sex for reasons such as safety, work opportunities, or proximity with relatives.

In all cases, prison management should pay careful attention to the number and type of detainees housed together. They must also be mindful of the risks of SGBV. Moreover, there should be adequate staff supervision to avoid violence.

### Example of gender-sensitive accommodation



**United States:** Several jurisdictions in the United States have developed methods of housing female prisoners at high risk of victimization without putting them in solitary confinement. In each case, decision-making about accommodation is “individualized and informed by a screening process conducted by trained staff and monitored by high-level supervisors.”<sup>224</sup> Other staff resources are also used to ensure safety. For example, the Wyoming Department of Corrections uses a screening tool combined with a housing matrix for women. Because most of the women in the facility qualify for less restrictive custody, they have modified their housing practices.<sup>225</sup>

Some jurisdictions have also reduced their use of segregated housing for transgender women, the majority of whom are housed in male facilities based solely on their physical anatomy. In Denver, the county jail has stopped automatically placing transgender women

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222 Nelson Mandela Rules, Rule 12.

223 *Towards the effective protection of LGBTI Persons Deprived of Liberty*, *op. cit.*, note 115, p. 34.

224 Swavola, Riley and Subramanian, *op. cit.*, note 165, p. 15.

225 *Ibid.*

based on their biological sex and now allows transgender people to fill in a “statement of preference form” that includes their preferred name and pronouns. Housing is recommended by a review board, and transgender prisoners can use private showers and request to share cells with other transgender people. They may also specify the gender of the officer who will conduct body searches, when necessary.<sup>226</sup>

### 5.6. Segregation

#### Key recommendation

- ✓ Police and prison administrations should ensure that adequate safeguards against SGBV are in place for those undergoing any form of punishment and those held in segregation.
- ✓ Protective segregation must only be instituted with the agreement of the prisoner/detainee concerned and should be subject to safeguards and regular review.
- ✓ Safeguards regarding the separation of prisoners and appropriate staffing should be applied to all detention situations, including transfer, during training programmes and in all parts of a detention facility.

The issue of segregating or separating certain detainees/prisoners is of particular relevance to addressing SGBV because the practice is often used to address the risk of SGBV or as a reaction to violence once it has occurred. However, segregation can also place detainees or prisoners in a vulnerable position and at risk of abuse vis-à-vis staff members, especially when contact with the outside world is limited, and particularly in cases of solitary confinement.

In some jurisdictions, detainees/prisoners who are considered to be at risk of SGBV are separated from the general population for their own safety and sometimes at their own request. This practice may limit the individual’s access to activities and services the detention facility provides. It can also have negative mental-health consequences, increase the risk of self-harm and suicide and may result in limitations to access to family visits. Furthermore, detainees/prisoners who are segregated may find their privacy is more limited than usual, particularly if they are transferred to an area that is ordinarily used for disciplinary purposes or for prisoners who are at risk of self-harm or suicide.

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226 *Ibid.*

## 5. REDUCING RISK IN SPECIFIC SITUATIONS

Removing a detainee/prisoner from the general population because they belong to a group that is vulnerable to SGBV may further stigmatize them. This may lead to further problems reintegrating into the general prison population and may be especially dangerous for LGBTI persons or those who have committed specific types of crimes, such as rape.

Segregation can also be discriminatory. It is therefore important that authorities carefully consider ways to protect detainees in situations of vulnerability that neither stigmatize nor discriminate against them, including alternatives to segregation. With regard to LGBTI individuals, APT and Penal Reform International (PRI) have also recommended that if a facility is intending to segregate a detainee or a prisoner for protective purposes, they should obtain an agreement from the individual concerned.<sup>227</sup>

In some countries, law enforcement or prison authorities resort to protective segregation for individuals who are considered to be at risk of SGBV. Yet international standards, including the Nelson Mandela Rules and the Bangkok Rules, are clear that the use of protective segregation is only justified in exceptional circumstances, for the shortest-possible time and with adequate procedural safeguards.

### **Case law example: *X v. Turkey* (European Court of Human Rights, 2012)**



When the applicant, a homosexual man, was placed in a shared prison cell with heterosexual prisoners, he was subjected to bullying and intimidation and requested transfer, for safety reasons, to a cell with homosexual prisoners. Prison authorities placed the applicant in an individual cell intended for prisoners who were placed in solitary confinement as a disciplinary measure. He was deprived of contact with other inmates and had no social activity or outdoor exercise. The prison authorities justified their actions on the grounds that the applicant faced a serious threat of abuse on the basis of his sexual orientation.

The Court found a violation of Articles 3 (prohibition of torture and inhuman or degrading treatment) and 14 (prohibition of discrimination) of the Convention and stated in its judgment that “the prison authorities did not undertake an adequate assessment of the risk posed to the applicant’s safety. On account of the applicant’s sexual orientation, the prison authorities believed that he risked serious bodily harm. Furthermore, as far as the Court is concerned, the measure fully excluding the applicant from prison life could not in any circumstances be regarded as justified.”<sup>228</sup>

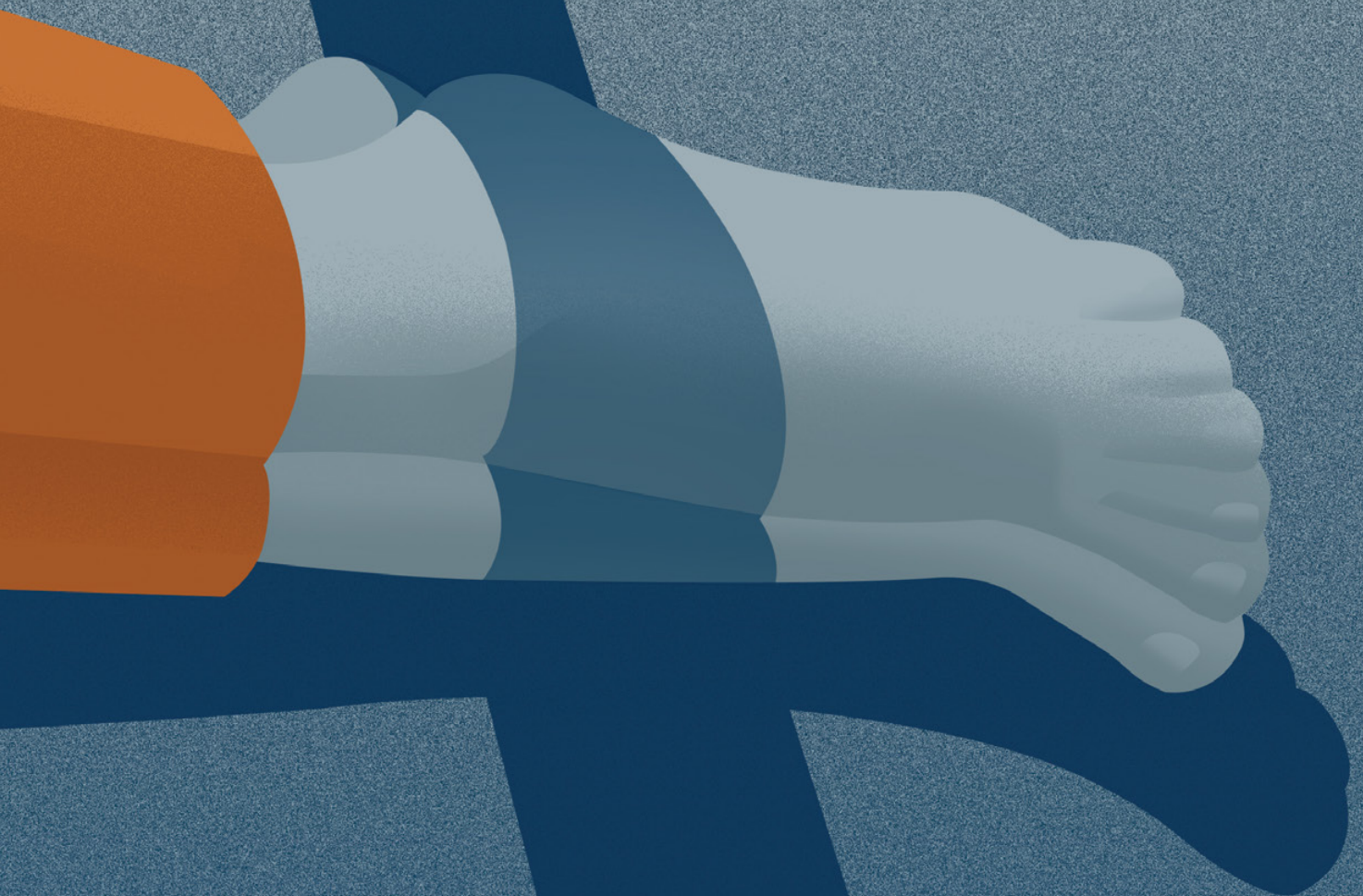
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227 Blanc, *op. cit.*, note 208, p. 11.

228 European Court of Human Rights, Case of *X vs. Turkey*, Judgment of 9 October 2012.



# 6. OTHER MEASURES TO PREVENT AND RESPOND TO SEXUAL AND GENDER- BASED VIOLENCE



# 6. OTHER MEASURES TO PREVENT AND RESPOND TO SEXUAL AND GENDER-BASED VIOLENCE

This section provides information about practices in places of deprivation of liberty that do not concern managing risk directly but can facilitate the prevention of, and response to, SGBV.

As evidenced by replies from OSCE participating States, while there are several promising practices in the OSCE region, very few countries have policies to address SGBV specifically. It is much more common for states that appear to be effectively addressing SGBV to adopt general good practices, such as fostering a culture of open communication and respect in places of deprivation of liberty or using diversion at an early stage. The sample practices provided in this section range from stand-alone initiatives to general approaches.

## 6.1. Research about SGBV for evidence-based policy

### Key recommendations

- ✓ Policy- and lawmakers should dedicate resources to conducting research and analysing existing information on the occurrence of SGBV in places of detention, including police stations, pre-trial detention facilities and correctional facilities.
- ✓ The work of monitoring bodies should be facilitated, including by granting them confidential, unhindered access to all detainees/prisoners.

All interventions to address SGBV should be based on a clear understanding of the problem and the needs of detainees/prisoners, staff and other stakeholders. The commentary to the Bangkok Rules notes that limited information and data about women in the

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criminal justice system “hinders the development of effective policies and implementation of programmes to respond to women offenders’ needs fairly and effectively.”<sup>229</sup>

The Bangkok Rules, the UN Standard Minimum Rules for the Administration of Juvenile Justice (known as the Beijing Rules) and the UN Standard Minimum Rules for Non-custodial Measures (known as the Tokyo Rules<sup>230</sup>) all highlight the importance of research as the basis for informed, evidence-based policy formulation and constitute the basis for advancing research on women in the criminal justice system. Evidence and information about SGBV not only form the basis of policy-making, but they should also inform training programmes and be used for raising awareness of the problem and identifying proper responses at the levels of policy and practice.

International guidance on violence against women emphasizes the role of the state in promoting research, collecting data and compiling statistics on the extent, root causes and effects of all forms of violence against women, “and on the effectiveness of measures to prevent and deal with violence.”<sup>231</sup> The results of research into SGBV and data should be disseminated and made available to the public.

State bodies should develop their capacity to conduct research and analysis relevant to SGBV with the support of the central government. As research carried out by government institutions risks not being comprehensive, it is also good practice for the state to enable other organizations, including NPMs, NHRIs, academic institutions and civil society organizations to carry out independent studies, by granting them access to detention facilities and allowing them to conduct confidential interviews with detainees/prisoners.

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### **Common practices for gathering evidence relevant to conduct research into SGBV in places of deprivation:**

- \* Population-based surveys that can be conducted among current detainees/prisoners, former detainees/prisoners, staff and other stakeholders;
- \* Reviews and analyses of administrative data such as prison records, police data, court reports and complaints filed;
- \* Case law reviews, which can include the jurisprudence of domestic and international forums, and can extend to complaints submitted to

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229 The Bangkok Rules, *op. cit.*, note 164.

230 United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by General Assembly resolution 45/110 of 14 December 1990.

231 Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 on Violence against women, 1992, para. 24(c). Also see Article 11, Istanbul Convention.



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treaty-monitoring bodies or Special Rapporteurs;<sup>232</sup>

- \* Monitoring and fact-finding missions, which can be conducted by NPMs, NHRIs and CSOs; and
- \* Reviews of information submitted under periodic country report processes, e.g., reporting on implementation of CEDAW, CAT, UNCRC, or under the UN Human Rights Council's Universal Periodic Review (UPR).

Organizations and individuals that conduct research should employ methodologies that solicit input from a range of stakeholders, including survivors of SGBV, as well as law enforcement and prison staff, service providers, medical personnel, legal professionals and family members of detainees/prisoners. Researchers should take care to ensure that any primary research conducted with survivors of SGBV conforms to ethical and safety standards, maintains confidentiality and avoids secondary victimization.<sup>233</sup>

### Examples of effective dissemination of research



The International and Correction and Prisons Association aims to disseminate “research-informed correctional knowledge” worldwide. It manages an online database of materials in 17 categories, including research.<sup>234</sup>

The European Organisation of Prison and Correctional Services (EuroPris) promotes information exchange between various organizations working in prisons and in criminal justice to develop best practices. EuroPris serves as a bridge between academic researchers and practitioners and manages an online library.<sup>235</sup>

Research and analysis can also refer to an evaluation of initiatives aimed at preventing SGBV. It is important that practices be evaluated so that, if they are effective, they can be replicated in other settings, and if they are ineffective, they can be discontinued. Unfortunately, measures currently used in closed facilities to prevent and respond to SGBV are rarely, if ever, evaluated.

232 Due to the requirement of exhausting domestic remedies, cases reviewed by international courts also include the domestic case history.

233 See, for example, *Researching Violence Against Women: A Practical Guide for Researchers and Activists* (Geneva: World Health Organization and PATH, 2005), <[http://apps.who.int/iris/bitstream/handle/10665/42966/9241546476\\_eng.pdf;jsessionid=A4F3C8575FB4CBDE86ED753A7EFE54F9?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/42966/9241546476_eng.pdf;jsessionid=A4F3C8575FB4CBDE86ED753A7EFE54F9?sequence=1)>; “Ethical and safety guidelines for research on gender-based violence”, Partners for Prevention, 2013.

234 See the website of the International Prisons and Correction Association: <<http://icpa.org>>.

235 See the website of the European Organisation of Prison and Correctional Services: <<http://www.europris.org>>.

### **Key recommendation**

- ✓ Existing methods of preventing and responding to SGBV should be regularly evaluated, including by external organizations, in order to determine their effectiveness.

Of the 27 participating States that completed the questionnaire developed by ODIHR, 24 reported that they had not conducted evaluations of existing programmes to address SGBV in places of deprivation of liberty. Respondents explained that measures had not been evaluated because the number of reported incidents was low, indicating an assumption that current prevention methods are effective. Three states – Finland, Hungary and Lithuania – are planning to or have already conducted an impact evaluation of specific prison-based programmes (for sex offenders and on violence reduction).

## **6.2. Law and policy**

### **Key recommendations**

- ✓ Law- and policymakers should ensure that domestic legislation clearly defines and prohibits SGBV in places of detention. They should also review existing laws, policies and procedures to identify areas where SGBV prevention and protection can be strengthened, including provisions on alternatives to detention.
- ✓ Laws should regulate investigation and prosecution procedures with regard to SGBV in places of detention, with a view to ensuring that acts of violence are prosecuted in the same manner they would be if perpetrated in the community.

Prisons should be run according to the rule of law and comply with international human rights standards. Domestic criminal law, policies and procedures should provide appropriate protection against SGBV and redress for victims, regardless of where it occurs. There must be agreed-upon and documented strategies that are consistently applied in all places of deprivation of liberty to prevent and respond to SGBV, and there must be clear rules prohibiting staff from abusing prisoners. Allegations of SGBV must be properly investigated, and those found responsible should be prosecuted for abusing the law.

### **6.2.1. National legislation**

National legislation that addresses SGBV in places of deprivation of liberty must reflect international human rights standards on preventing and responding to gender-based violence. The international legal and policy instruments that address violence against women offer useful guidance on the legislative requirements for adhering to interna-

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tional standards. These should be implemented and can, in some cases, also be adapted into laws on gender-based violence more generally.<sup>236</sup>

There are many ways states can address SGBV through the legal system, such as by adopting stand-alone and comprehensive legislation or by strengthening existing national laws. In addition to criminal sanctions, civil remedies and compensatory provisions are also valuable tools for providing redress to victims.

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### Key characteristics of effective laws:

- \* Recognizing that GBV is a form of gender-based discrimination, a human rights violation and a manifestation of gender inequality;
- \* Taking a comprehensive and multidisciplinary approach that encompasses prevention, protection and support for survivors, as well as appropriate punishment of perpetrators. In places of deprivation of liberty, perpetrators of SGBV, particularly if they are fellow detainees or prisoners, should be prosecuted as they would if they had perpetrated the crime in the community.
- \* Taking a gender-sensitive (and not gender-blind) approach. This is especially important in the context of SGBV occurring in places of deprivation of liberty, as the law must recognize that both men and women may be victims, while also allowing for specialized procedures or remedies that are gender-based.
- \* Mandating within the law that capacity-building will be conducted for relevant authorities and that there will be specialized responses to SGBV (e.g., the creation of specialized units or courts to deal with it). Note that national laws on SGBV should clearly define the elements of the crime and regulate investigation and prosecution procedures, but it should also have a broader regulatory scope that covers topics such as data collection, evaluation, training and funding.

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### Examples of how SGBV is addressed in law



**Albania:** In 2014, the Albanian government made a number of gender-sensitive amendments to its national legislation that were informed by the UN Bangkok Rules. The country's legal

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<sup>236</sup> *Handbook for Legislation on Violence against Women* (New York: United Nations, 2010), <<http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>>.

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framework<sup>237</sup> already requires strict separation of male and female inmates and for female staff to supervise female inmates, but new provisions have been added that lay out the state's responsibility to prevent GBV under a non-discrimination clause. The framework also grants immediate protection for all survivors of GBV and individualized treatment and healthcare based on gender-specific needs, including on the basis of sexual orientation and gender identity.<sup>238</sup> Earlier amendments to the Criminal Code provide alternatives to imprisonment for victims of GBV, including house arrest for pregnant women or mothers of children under the age of ten.<sup>239</sup>

**Spain:** In 2004 the Spanish government passed a law on Integrated Protection Measures against Gender Violence. Its goal was to create a holistic and multidisciplinary approach for dealing with GBV. The law distinguishes GBV from other forms of violence by the element of discrimination. It established a special authority over GBV, known as the Family and Women Central Unit of the police. It also cemented a specialized prosecutor on violence against women, specialized courts with combined criminal and civil jurisdiction, and victim support offices. The law also requires the close co-ordination of all agents involved in the process (such as the state security forces, prosecutors, forensic experts, psychologists, magistrates, etc.). The law applies to gender-based violence occurring in the community and in places of deprivation of liberty.<sup>240</sup>

**United States:** Several civil rights groups have brought claims against state authorities on behalf of victims of SGBV for failing to address widespread sexual misconduct on the part of staff in detention facilities, including failures to prevent, detect and punish it. Such cases tend to involve multiple victims and recurring patterns of abuse over a number of years. Civil class-action lawsuits have forced prison management to institute system-wide change and also resulted in monetary compensation for victims of GBV.<sup>241</sup>

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237 Law No. 8328 of 16 April 1998 on the Rights and Treatment of Convicted and Pre-trial Detainees, and General Regulation of Prisons approved by CMD No. 437 of 20 May 2015, as amended, General Regulation of Prisons approved by Decision of Council of Ministers No. 303, 25 March 2009.

238 Jo Baker and DIGNITY, "Women in Detention in Albania, Needs, vulnerabilities and good practice", DIGNITY – Danish Institute Against Torture, 2015, pp. 22-23, <[https://dignity.dk/wp-content/uploads/pubseries\\_no10.pdf](https://dignity.dk/wp-content/uploads/pubseries_no10.pdf)>.

239 *Ibid.*, p. 21. Note that it has been reported that the Criminal Code provisions have not yet been fully implemented.

240 Information about the Organic Act 1/2004 on Integrated Protection Measures against Gender Violence provided by Alba Arquerros Tornos, Detective Inspector in the Family and Women Central Unit, to ODIHR in December 2016.

241 In 2010, for example, the Washington Department of Corrections settled a lawsuit brought by five then-current and former female prisoners, agreeing to reform training, complaint and investigation procedures, as well as instituting new staff policies, and paying 1 million USD in damages. In 2011, the Delaware Department of Corrections settled a lawsuit for 287,000 USD with the condition that, within a year, it would improve staff training, notification to prisoners of their rights and security features.

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### **Case Study: United States – The Prison Rape Elimination Act**

In 2003, the United States Congress unanimously passed the Prison Rape Elimination Act (PREA), the first federal civil law to address sexual violence in places of deprivation of liberty in the United States.<sup>242</sup> The passage of the law was the result of decades of research and advocacy conducted by civil society organizations and survivors of prison rape, and was also based on detailed documentation of cases of sexual violence occurring in prisons in the United States.<sup>243</sup> The PREA applies to most places of deprivation of liberty, including federal and state prisons, jails, police lock-ups (temporary holding facilities used by law enforcement agencies), juvenile and private prison facilities, community corrections facilities, such as halfway houses and immigration detention centres. The PREA applies to prisoner-on-prisoner sexual abuse and staff sexual misconduct.

The PREA establishes several mechanisms for combating sexual violence in prisons:

1. *Enshrined in law:* The PREA requires that places of deprivation of liberty that are covered by the law and that want to continue receiving federal funding adopt a zero-tolerance environment and a comprehensive set of policies and practices, which are outlined in federal regulations.
2. *Ongoing studies:* After the PREA was passed, the National Prison Rape Elimination Commission (NPREC), a federal bipartisan commission, was convened to conduct a comprehensive legal and factual study of sexual violence in prisons and to develop national standards.<sup>244</sup> The Commission released its report in 2009, based on which the Department of Justice issued binding National Standards to Prevent, Detect, and Respond to Prison Rape in 2012.<sup>245</sup>
3. *Data collection, research and reporting:* The PREA requires that the federal Bureau of Justice Statistics (BJS) conduct annual surveys and research on the prevalence and effects of sexual violence in places of deprivation of liberty and analyse the results of such studies. The BJS conducts its work through the dedicated National Prison Rape Statistics Program. It reviews administrative records and also uses four specialized data-collection processes: the Survey of Sexual Victimization, the National Inmate Survey, the National Survey of Youth in Custody and the National

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242 For the full text of the PREA, see <<https://www.gpo.gov/fdsys/pkg/PLAW-108publ79/pdf/PLAW-108publ79.pdf>>.

243 In 2001, for example, Human Rights Watch (HRW) published “No Escape: Male Prisoner Rape”, a 378-page report using information obtained from 200 prisoners in 34 states, as well as survey data from state prison authorities. HRW has also published several reports on the sexual abuse of female detainees by prison guards.

244 Further information about the NPREC is available at <<https://nicic.gov/>>.

245 28 C.F.R. Part 115. The national standards are available at: <[http://ojp.gov/programmes/pdfs/prea\\_final\\_rule.pdf](http://ojp.gov/programmes/pdfs/prea_final_rule.pdf)>.

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Former Prisoner Survey.<sup>246</sup> The PREA also created a Review Panel on Prison Rape within the United States Department of Justice that conducts public hearings with a focus on the three facilities with the highest incidence of sexual violence and the two facilities with the lowest incidence, as identified by BJS surveys. The hearings seek to “identify common characteristics among corrections systems where sexual violence is prevalent and among those that have been successful in deterring this type of abuse.”<sup>247</sup> The Attorney General submits an annual report of the activities of the BJS and the review panel to Congress and the Department of Health and Human Services.

4. *Prevention, investigation and prosecution:* The PREA establishes a national clearing house within the National Institute of Corrections that gathers informational and guidance resources for the authorities that have responsibility to prevent, investigate and punish sexual violence in prisons.<sup>248</sup> The National PREA Resource Center is the repository for research, standards and best practices, training and technical assistance materials, and audit instruments.<sup>249</sup> The PREA requires that the National Institute of Corrections conduct training and educational programmes for federal, state and local correctional authorities.
5. *Grant programme and funding:* The PREA authorizes federal funds for grants to assist state and local governments and prison systems to implement the requirements of the law and the National Standards. The PREA stipulates that states that do not fully comply with the National Standards are subject to the loss of five per cent of any grant funds that they would otherwise have received for prison-related programmes.
6. *Oversight and auditing:* The National Standards mandate that all facilities that are covered by the PREA undergo an independent audit every three years. Audits are conducted using one of four possible audit instruments (for adult prisons and jails, for lockups, for community confinement facilities and for juvenile facilities), which are developed by the PREA Resource Center and the Department of Justice.

Some of the most significant elements of the PREA include the fact that the law makes a clear commitment to address sexual violence in places of detention as a human rights abuse. It acknowledges a previously hidden issue, SGBV, as a widespread problem. The law and National Standards are based on best practices and focus on changing policy and procedures. The National Standards are conceived as a starting point, and correctional facilities are encouraged to adopt innovative methods to protect detainees and prisoners and to share information about effective approaches.

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246 “Prison Rape Elimination Act (Sexual Victimization in Correctional Facilities)”, Bureau of Justice Statistics, available at <<http://www.bjs.gov/index.cfm?ty=tp&tid=20>>.

247 “The Prison Rape Elimination Act Fact Sheet”, Just Detention International, 2009, <<http://justdetention.org/wp-content/uploads/2015/10/FS-The-Prison-Rape-Elimination-Act.pdf>>.

248 Prison Rape Elimination Act (PREA), United States Department of Justice National Institute of Corrections, <<https://nicic.gov/prison-rape-elimination-act-prea>>.

249 See the National PREA Resource Center: <<https://www.prearesourcecenter.org>>.

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At the same time, practitioners point to a number of challenges that remain. Holding facilities accountable for non-compliance with the PREA and the National Standards has proven difficult in some cases. For example, in 2014, the governor of Texas stated that the Texas Department of Criminal Justice would not comply with PREA standards, despite federal surveys that indicated the state had “some of the highest rates of sexual victimization in the country.”<sup>250</sup> The PREA does not create a private right of action but protects prisoners’ constitutional rights (the Eight Amendment right to be free from “cruel and unusual punishments”). United States case law indicates that courts are not consistent in relying on the PREA to support the claims of survivors of violence.<sup>251</sup> In addition to improving accountability for facilities that are found to be noncompliant, independent oversight processes should be strengthened. In particular, there is a need to increase public access to auditors’ reports, as well as include the voices of survivors in ongoing efforts to prevent SGBV.

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### 6.2.2. Policy instruments

#### Key recommendations

- ✓ Gender-sensitive management policies should be introduced in places of deprivation of liberty, along with a staff code of conduct that addresses SGBV and takes a zero-tolerance approach to violence and discrimination.
- ✓ Policy frameworks should include a broad regulatory scope on SGBV that covers such topics as data collection and assessment, training and funding, as well as recognition that both women and men may be victims, while also allowing for specialized procedures or remedies that are gender-based.
- ✓ Specialist organizations should be consulted on how to formulate policies and guidelines to best support the needs of vulnerable groups.

Policies are needed to implement laws to regulate prevention, identification, detection and responses to SGBV. This section looks at the policy instruments that can be used to tackle SGBV.

Policy can take a number of forms, such as strategies, codes of ethics, professional

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250 “Ignoring Human Rights Crisis, Governor Perry Says Texas Won’t Adopt PREA Standards”, Just Detention International, 31 March 2014, <<http://justdetention.org/ignoring-human-rights-crisis-governor-perry-says-texas-wont-adopt-prea-standards/#search>>.

251 Viktoria Kristiansson, “Justice for Victims Behind Bars: Improving the Response to Cases of Sexual Abuse in Confinement”, Aequitas, 2014, <<https://www.prearesourcecenter.org/sites/default/files/library/justiceforvictimsbehindbars-improvingtheresponsetocasesofsexualabuseinconfinement.pdf>>.

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standards, guiding principles for law enforcement and correctional services, protocols for investigating allegations of SGBV, and internal rules on the management of specific security issues or risk factors. Prison policies should clearly define a zero-tolerance approach to SGBV in all its forms.

Policies should be comprehensive enough to take into account the gender-specific needs of both women and men as well as other aspects of identity, such as age, ethnicity or religious background. Policy also regulates staff conduct and responsibilities. The Bangkok Rules state that “clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.”<sup>252</sup>

At the international level, the UN Code of Conduct for Law Enforcement Officials outlines the duty of states to protect the human rights of all and the prohibition on inflicting, instigating or tolerating “any act of torture or other cruel, inhuman or degrading treatment or punishment.”<sup>253</sup> The UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are also relevant in the context of SGBV. Principle two states that health personnel who engage either actively or passively in acts that “constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment” are in gross contravention of medical ethics as well as committing an offence under applicable international instruments.<sup>254</sup>

Countries have put many different types of policies in place to prevent and respond to SGBV. Some countries have articulated an overall approach to incarceration that regulates how SGBV should be prevented and managed. Others have adopted internal policies that apply to specific aspects of the correctional system.

### Examples of policy instruments that prevent and respond to SGBV



**Austria:** The Austrian NPM has advised correctional institutions to develop policy on sexual harassment, including ensuring that there are no depictions of naked women in staffrooms, as a means to ensure that the workplace does not endanger the sexual autonomy,

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252 Bangkok Rules, Rule 31.

253 “Code of Conduct for Law Enforcement Officials”, OCHCR, 17 December 1979, <<http://www.ohchr.org/Documents/ProfessionalInterest/codeofconduct.pdf>>.

254 “Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, OCHCR, 18 December 1982, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/MedicalEthics.aspx>>.



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sexual integrity and privacy of employees.<sup>255</sup>

**Canada:** While Canada has no overall strategy for preventing SGBV in federal prisons, the Corrections and Conditional Release Act,<sup>256</sup> which governs federal corrections, and the Commissioner’s Directives<sup>257</sup> provide policy and procedural guidance on an array of topics. The Commissioner’s Directives consist of an overview of responsibilities, procedures, definitions and cross-references, as well as checklists and plans. They set forth procedures and guidelines relevant to SGBV, on incident investigation, offender complaints, inmate accommodation, inmate searches (with cross references to the staff protocol on women offenders), inmate needs identification at admission and gender dysphoria.

**Malta:** In 2016, the Correctional Services of Malta adopted written policy (the Trans, Gender Variant and Intersex Inmates Policy)<sup>258</sup> in order to, *inter alia*, outline the procedures that should be followed by state authorities in the event of a transgender, gender-variant or intersex inmate being brought into custody.<sup>259</sup> The policy is meant to “enable all inmates to be treated fairly and without discrimination or harassment on grounds of gender identity, gender expression and/or sex characteristics.” It is also meant to ensure that transgender, gender-variant and intersex inmates are not subjected to “discrimination, harassment, victimization, bullying or violence whether emotional, physical and/or verbal.” The policy sets forth detailed guidance relevant to custodial activities, such as entry procedures, body searches, shower facilities, clothing and access to other services. In the context of allocation of accommodation, the policy notes that transgender inmates should be allocated to a male or female establishment as per their gender marker, but concerns about safety warrant consideration of a different assignment if the inmate is considered to be at risk of sexual assault or abuse.

**Norway:** In Norway, White Paper No. 37 sets out the five pillars that

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255 Annual Report 2015 on the activities of the Austrian National Preventive Mechanism (NPM), International Version, p. 171.

256 “Corrections and Conditional Release Act (S.C. 1992, c. 20)”, Government of Canada, <<http://laws-lois.justice.gc.ca/eng/acts/C-44.6/>>.

257 “Commissioner’s Directives”, Correctional Service Canada, <<https://www.csc-scc.gc.ca/politiques-et-lois/005006-0001-en.shtml>>.

258 “Trans, Gender Variant & Intersex Inmates Policy”, Correctional Services of Malta, 2016, <<https://homeaffairs.gov.mt/en/media/Policies-Documents/Pages/-Trans-Gender-Variant--Intersex-Inmates-Policy.aspx>>.

259 *Ibid.*

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govern the Norwegian Correctional Service:<sup>260</sup>

- (1) Punishment is implemented in a way that lawbreakers are rehabilitated and recidivism is reduced;
- (2) A humanist approach is taken towards inmates;
- (3) The principle of due process and equal treatment is adhered to;
- (4) The principle that those convicted have paid their debt to society when the sentence has been served is adhered to; and
- (5) The normality principle is adhered to.

The normality principle means that:

- (1) The restriction of liberty is an inmate's sole punishment, and no other rights should be restricted by the sentencing court;
- (2) Deprivation of liberty is the actual penalty, and therefore the prison term "shall not be more onerous than security considerations demand;" and
- (3) When serving a sentence, life inside the correction facility will resemble life outside as much as possible.<sup>261</sup>

Together, the five pillars contribute to how the corrective services maintain security. The Correctional Service "shall prevent inmates being exposed to pressure, threats, violence and social control by their fellow inmates", balanced against the objective of ensuring that "an unnecessary high level of security for [...] inmates and convicted persons" is not imposed.<sup>262</sup> The corrective services operate on the principle that "no one shall serve under stricter conditions than necessary" in order to reduce the harmful effects of loss of liberty. This means, therefore, that the incidence of violence, including SGBV, should be drastically reduced by virtue of a substantial reduction in coercion.

**Serbia:** Rulebooks of the Serbian penitentiary service are internal penitentiary regulations in accordance with the Law on the Enforcement of Criminal Sanctions. They provide detailed procedures and instructions for services in correctional institutions in order to strengthen the management of security risks and to prevent all

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260 The five pillars are outlined in the 2007-2008 White Paper No. 37, "Punishment that works - less crime - a safer society", which was submitted to parliament. A summary of the White Paper in Norwegian and several other languages is available at <<http://www.kriminalomsorgen.no/propositions-to-the-storting.112048.en.html>>.

261 *Ibid.*, p. 9.

262 *Ibid.*, p. 6.

forms of violence, including SGBV. Among other topics, the rule-books regulate:

- The rights of those convicted, including humane treatment, in particular during personal searches, body searches and medical examinations;
- Risk assessment, separation and classification processes for prisoners to minimize the risk of violent behaviour;
- Placement of detainees and convicts;
- Instruments of restraint and the conditions and limits of their usage; and
- Complaint mechanisms.<sup>263</sup>

### 6.2.3. Alternatives to imprisonment for at-risk individuals

- ▶ **Moscow 1991:** “The participating States will (i) endeavour to take measures, as necessary, to improve the conditions of individuals in detention or imprisonment; (ii) pay particular attention to the question of alternatives to imprisonment”.

Providing alternatives to detention for individuals who are particularly vulnerable to, or at risk of, SGBV at the pre-trial stage and at the time of sentencing can be an important preventive measure. In order to make effective determinations regarding the risk of SGBV, there must be effective co-ordination between law enforcement, penitentiary, probation and judicial actors about risk factors and criteria, starting with early intervention by arresting officers. Co-ordination should continue to the sentencing stage, so that alternatives to detention are considered for vulnerable individuals and so that their rights are secured while still ensuring the delivery of justice.

#### **Key recommendations**

- ✓ Systems to monitor and evaluate the use of detention and pre-trial detention should be introduced or improved, and non-custodial measures should be considered, with a particular focus on groups that may be vulnerable to SGBV.

<sup>263</sup> Presentation by Mile Pavlović, Treatment Officer, Correction Facility for Adult Men in Niš, Serbia, Preventing and addressing sexual and gender-based violence in closed facilities, Expert practitioners’ Meeting, OSCE/ODIHR, 17-18 October 2016, Warsaw.

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- ✓ Standardized criteria should be developed to enable the police and judicial authorities to consider diversionary measures and alternatives to detention.
- ✓ Lawmakers should ensure that the police and prosecutors are authorized to divert individuals away from the criminal justice system, taking into account the nature and gravity of the offence and the potential risk of violence in detention. Resources should be allocated to devise suitable alternatives for those at risk of SGBV, including victims of abuse. Such alternatives should include support and counselling, where needed.

The Bangkok Rules recognize the links between women’s experiences of violence and criminal behaviour and recommend that resources be made available to “devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women’s contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects.”<sup>264</sup> The Tokyo Rules also state that the principles and safeguards for the use of non-custodial measures should be applied without discrimination.<sup>265</sup> Defence lawyers, prosecutors and judges should be proactive in determining whether a particular offender is in, or will be put in, a situation of vulnerability to SGBV if they are imprisoned. This risk should be balanced against the need for custodial measures and whether a suitable alternative can be found that will still serve the aims of criminal justice.

### Example of alternatives to imprisonment



**Sweden:** In 1999, Sweden introduced a system of intensive supervision and electronic monitoring for low-level offenders serving short sentences of less than three months, which meant they could serve their sentence outside of a penitentiary facility. This approach led to about 250 to 300 fewer women sent to prison each year, as those who would have served short sentences in custody instead served their sentence in the community.<sup>266</sup> Rehabilitation is a central

264 Bangkok Rules, Rule 60.

265 Tokyo Rules, para. 2.2.

266 Tamsyn Wilson, “International Review of Custodial Models for Women: Key Messages for Scotland”, Justice Analytical Services of the Scottish Government, 2015, p. 19.

principle that underpins the Swedish penal system, and particular attention is paid to the special needs of women that are linked to their criminality, including gender roles and experiences as victims of violence.<sup>267</sup>

### 6.3. Static and dynamic security

Security in places of deprivation of liberty involves both static measures, such as the physical design and infrastructure of buildings and use of technology, and dynamic practices. Making use of both static and dynamic security measures is an approach that can contribute to preventing and addressing SGBV, in addition to being a necessary part of risk management and violence prevention.

#### 6.3.1. Static security

Static security features of closed facilities, such as the architecture and infrastructure, should aim to ensure the safety for anyone who could become a victim of SGBV (primarily detainees and prisoners but also staff, visitors and others). Gender-sensitive design should allow inmates who might be at risk of SGBV (including, but not limited to, female detainees/prisoners) full movement within the facility and use of programmes and services while ensuring they are not put in situations of vulnerability (e.g., maximizing privacy and dignity, separating women from male inmates and staff).

The separation of detainees/prisoners of different sexes and ages can be reinforced through the architectural layout of a facility to avoid visual or sound transfer to the extent possible. For example, it is recommended that facilities be designed in such a way that women do not have to walk through areas that house men to access education, work or recreational areas.<sup>268</sup>

Special attention should be paid to areas in the facility where SGBV may not be detected. Such blind spots include sleeping areas, toilets and bathing areas. The supervision of these locations should be balanced against respect for privacy (e.g., a partial screen could be positioned in showers to reveal the head and feet only). Areas that are used for body searches should be designed in a way that “balance(s) visual privacy and security considerations without provoking a sense of feeling trapped or victimized.”<sup>269</sup>

Closed-circuit television (CCTV) can also be used to prevent or deter SGBV or to secure evidence if SGBV has occurred. However, experts note that there are both positive aspects to, and also risk associated with, the use of CCTV, particularly in the con-

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<sup>267</sup> *Ibid.*

<sup>268</sup> “Technical Guidance for Prison Planning”, United Nations Office for Project Services, 2016, p. 44.

<sup>269</sup> Laura Maiello and Stephen Carter, “‘Minus the urinals and painted pink?’ What should a women’s prison look like?” PRI blog post, 9 December 2015, <<https://www.penalreform.org/blog/10020/>>.

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text of police custody and interrogations. CCTV can only be effective in preventing abuse if used in conjunction with other measures.<sup>270</sup>

### **Key recommendations**

- ✓ Prison administrations should introduce CCTV cameras, where possible, to prevent SGBV or to collect evidence.
- ✓ The use of CCTV should be properly regulated to ensure that the right to privacy is fully respected.
- ✓ CCTV should only be used for protective or investigatory purposes and should not replace dynamic methods of security.

Some important considerations around the use of CCTV proposed by experts include: the location of equipment (e.g., do they monitor blind spots where SGBV could be perpetrated while also safeguarding privacy, dignity and confidentiality? In interrogation rooms, do they record the entire room and everyone inside it?); the storage and use of recorded material (are the people authorized to view recordings aware of regulations concerning SGBV? How is the material stored, who has the authority to view it and can it be used as evidence?); and the type facilities and regulations (are the places of deprivation of liberty where there is the greatest risk of SGBV equipped with CCTV monitoring? How is this regulated?).

The APT and PRI both point out that: “In some contexts, CCTV may be used to compensate for a shortage of staff, even though this may not be acknowledged. Overreliance on CCTV may also increase the risk of dehumanizing places of detention.”<sup>271</sup>

### **6.3.2. Dynamic security**

### **Key recommendations**

- ✓ All relevant staff should be trained in concepts of dynamic security and encouraged to take an active interest in the welfare of detainees/prisoners and to develop positive relationships with them.
- ✓ Dynamic security training should be gender-sensitive and cover all aspects related to the prevention of SGBV

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270 See, for example, “Video recording in police custody: Addressing risk factors to prevent torture and ill-treatment. Fact Sheet”, APT/PRI, 2015.

271 *Ibid.*

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Many places of deprivation of liberty do not have access to advanced technologies, such as CCTV or electronic body scanners. Dynamic security refers to everyday approaches to security in terms of staff–prisoner interaction. As such, dynamic security approaches are far less dependent on high-tech equipment and can be implemented in any place of detention. It has also been noted that “dynamic security elements, such as increased staff/prisoner contact and interaction can offset a prison’s limited static security components.”<sup>272</sup>

The European Prison Rules state that: “Physical and technical security arrangements are essential features of prison life, but on their own they are not sufficient to ensure good order. Security also depends on having alert staff who interact with prisoners, who have an awareness of what is going on in the prison and who make sure that prisoners are kept active in a positive way.”<sup>273</sup>

Dynamic security can be especially effective in preventing SGBV because when staff are regularly interacting with detainees/prisoners they are more likely to detect indicators of vulnerability or detect that someone is a potential perpetrator of abuse. This can help prevent problems before they arise. Similarly, facilities that practice dynamic security methods will be in a better position to identify the first signs of abuse. Victims may also feel more comfortable reporting incidents to staff that they know and trust. Staff will therefore be better equipped to respond appropriately.

To be effective, such approaches require adequate training of staff in the concept and application of dynamic security, as recommended by the Nelson Mandela Rules.<sup>274</sup> Dynamic security approaches are most effective when used in conjunction with comprehensive, ongoing risk and needs assessments.

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### Essential elements of dynamic security:<sup>275</sup>

- \* Staff develop relationships with detainees and prisoners through positive interactions and interpersonal skills;
- \* There is a proactive approach to recognizing security threats at an early stage;
- \* There is dependence on professional relationships between staff and prisoners to de-escalate potential incidents or to restore order through processes of dialogue and negotiation;

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272 *Prison Incident Management Handbook* (New York: United Nations, 2013), p. 21.

273 European Prison Rules, Rule 51.

274 Nelson Mandela Rules, Rule 76(c).

275 Adapted from *Handbook on Dynamic Security and Prison Intelligence* (Vienna: United Nations Office on Drugs and Crime, 2015), p. 29; European Prison Rules, Rules 51 and 64.

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- \* There is a sense of fair treatment and well-being among prisoners;
- \* Staff ensure prisoners are kept active in a constructive and positive way that contributes to their future reintegration into society; and
- \* Staff understand the backgrounds and needs of different groups held in the place of detention.

### Examples of dynamic security in prisons



**Italy:** Guidelines for dynamic security were introduced into the Italian penitentiary system in 2000 and were further elaborated in 2013 by the Department of Penitentiary Administration. The guidelines provide the basic principles for facilities across the nation but also permit individual facilities some flexibility in implementing dynamic security in accordance with regional and local contexts.<sup>276</sup> Key principles include a focus on understanding the personal situation of each inmate, creating conditions in which inmates spend the majority of the day outside their cells, collaboration between staff to implement dynamic security and information-sharing. Prison officers are given training in dynamic security with an emphasis on how to communicate with inmates, understand their needs, observe their behaviour and contribute to their rehabilitation.<sup>277</sup> Through regular contact with prisoners, prison staff are better able to recognize patterns of behaviour and can detect changes readily.

**Norway:** The Norwegian Correctional Service prioritizes dynamic security approaches in its efforts to prevent violence. Their approach centres on encouraging prison officers to take an active interest in the welfare of prisoners. During field visits to two Norwegian prisons in preparation of this publication, prison staff stated that by taking a dynamic approach they have been better able to spot problems at an early stage. They stated that they are more aware of any changes in inmate behaviour, and they can minimize or defuse potential security risks by taking preventative steps. Prison officers emphasized that spending time speaking to prisoners and getting to know them is a crucial part of their daily activities and that by encouraging mutual respect, there is far less likelihood of violence,

276 Circular letter No. 3649/6099 of the Department of Penitentiary Administration to the Regional Directors of Penitentiary Administration.

277 Presentation by Carla Ciavarella, Ministry of Justice, Italy, Preventing and addressing sexual and gender-based violence in closed facilities, Practitioners' Meeting, OSCE/ODIHR, 17-18 October 2016, Warsaw.



abuse or mistreatment in any form. Representatives of Norway's NPM stated that prison staff consistently react to low levels of violence, which has the effect of preventing escalation. The staff-to-inmate ratio is very high in Norway (102 staff per 100 inmates in prisons and remand units).<sup>278</sup>

### 6.4. Providing information about rights, rules and expectations

#### Key recommendation

- ✓ Policy- and lawmakers should ensure there are written guidelines in place that detail how a detainee/prisoner can complain and the steps to be taken when a complaint of SGBV is received. Procedures should set out timelines for response and an investigation, as well as measures to be taken to protect the safety and maintain the confidentiality of the victim and any witnesses.
- ✓ Police and prison administrations should inform all detainees/prisoners and staff about complaints mechanisms and ensure that they can make complaints about SGBV in full confidentiality and without fear of retaliation or other negative consequences.
- ✓ Staff should inform detainees/prisoners upon admission about zero-tolerance policies against SGBV in the facility.

During admission processes, every prisoner should be provided with information about their rights, including how to make complaints if they believe their rights have been violated. They should also be informed about the disciplinary sanctions that can be applied if they infringe prison rules, including those related to SGBV.

Information about rights, obligations and the process of making complaints should be communicated in both written and oral form and be displayed prominently in places of deprivation of liberty in a manner that can be accessed and understood by all detainees/prisoners, including by making the information available in different languages and using interpretation where needed. In line with the Nelson Mandela Rules, the information should also be communicated in an effective and understandable way, taking into consideration any disabilities of the detainee/prisoner, which may require the use of “Braille and easy-to-read formats, and sign languages for deaf or hard-of-

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<sup>278</sup> Correctional Service of Norway Staff Academy, “Correctional Statistics of Denmark, Finland, Iceland, Norway and Sweden 2010 – 2014”, Oslo, 2016, p. 50.

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hearing individuals,”<sup>279</sup> as well as other languages spoken.

Because victims of SGBV are likely to be reluctant to report abuse, are disempowered, desensitized and may not even recognize behaviour as abusive, administrations of places of deprivation of liberty should consider providing newly arrived prisoners and staff with educational materials specifically about SGBV, the various forms it can take, its consequences and what action inmates can take if they have been abused or are at risk of abuse.

The process of providing information upon admission should be supplemented by ongoing awareness-raising activities and/or training programmes from differing sources and in different formats.

The United States-based NGO Just Detention International recommends, for example, that inmates receive information during the admission process about the zero-tolerance policy for SGBV and the process for reporting it. Then, after 30 days, they recommend that staff provide inmates with “comprehensive education [...] regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.”<sup>280</sup> The organization has developed guidance on the content of the educational programmes and has developed two videos for prisoners (a three-minute video for admission and a 16-minute video for comprehensive education).

Peer-to-peer programmes can be used for educational purposes. In these programmes, detainees/prisoners who are familiar with the conditions and procedures regarding SGBV and the reporting mechanisms for it can act as mentors for new arrivals and also take responsibility for shaping a safe prison culture. The use of peer programmes in the context of SGBV should be approached cautiously and must be developed carefully, with effective screening processes, training and supervision.

### Examples of peer-to-peer programmes



**United States:** Adult peer education programmes are being used in prisons and some jails as a tool for preventing SGBV by addressing the root causes. Practice has shown that efforts to achieve cultural change through education “especially around a sensitive topic, like sexual abuse – are more likely to succeed when the information is

279 Nelson Mandela Rules 54, 55; Interim Report of the Special Rapporteur on torture and other inhumane or degrading treatment or punishment, 7 October 2013, A/68/295, para. 79.

280 “The Inmate Education Facilitator’s Guide: PREA: What You Need to Know”, National PREA Resource Center, 2014, p. 3.

presented by a peer.”<sup>281</sup> Such programmes provide inmates with opportunities to take on positive leadership roles. Peer educators are also more accessible than staff or other trainers for follow-up questions or advice.

However, there are limitations to the use of peer education. First, it may not be appropriate in juvenile facilities due to the fact that “while young people can be effective teachers about topics like dynamics of sexual abuse and setting boundaries, messages around zero tolerance resonate more strongly coming from an adult.”<sup>282</sup> Effective peer education programmes require staff liaison officers who can work with programme mentors and prisoners, a diverse team of peer educators, and training and support for the educators themselves.

### 6.5. Medical screening and health services

#### Key recommendations

- ✓ Places of detention should ensure that anyone who is arrested and detained has access to a doctor, if requested.
- ✓ Where SGBV is detected, detainees/prisoners should be provided with specialized medical assistance, psychological support and counselling. If a facility is unable to have such specialists on staff, it should ensure that all medical staff have received some training in identifying signs of SGBV and responding appropriately.
- ✓ All detainees/prisoners should receive a medical examination on arrival conducted by a doctor or other qualified healthcare professional in full privacy. Healthcare professionals should also look for possible signs of SGBV.
- ✓ Women must have the option to be examined by a female doctor and the right to refuse vaginal examinations or to provide information on their reproductive health history.
- ✓ Healthcare staff should play an active role in preventing SGBV. Medical appointments should involve a conversation with detainees/prisoners to identify signs of SGBV that are not visible and to provide them with an opportunity to report abuse.

281 “PREA and Inmate Education: A Resource Guide”, National PREA Resource Center/Just Detention International, 2016, p. 31.

282 *Ibid*, p. 44.

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At the time of admission to a place of deprivation of liberty, a qualified healthcare professional should perform a comprehensive medical examination that includes screening for SGBV. The Nelson Mandela Rules stipulate that a physician or other qualified healthcare professional “shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary.”<sup>283</sup> As part of this process, medical staff should identify any ill-treatment the inmate may have been subjected to prior to admission.

The Bangkok Rules recommend that for women, screening should determine whether the prisoner suffered from sexual abuse or other forms of violence prior to admission.<sup>284</sup> It is a good practice to develop gender-sensitive screening processes to detect signs of SGBV for all detainees and prisoners.

Places of deprivation of liberty should have a protocol outlining the procedure that must be followed when a healthcare professional suspects SGBV has occurred. The Bangkok Rules suggest the following steps: informing the prisoner of the right to “seek recourse from judicial authorities”, and about the procedures and steps involved. “If [a] woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.”<sup>285</sup>

The Istanbul Protocol outlines the obligations of healthcare professionals and the process for investigating and medically documenting cases of torture.<sup>286</sup> Places of deprivation of liberty should ensure that the relevant staff are trained in the Istanbul Protocol and, in particular, about reporting processes.

In addition to detecting SGBV at the time of admission, healthcare professionals who care for detainees and prisoners can play a vital role in identifying and preventing violence occurring in places of deprivation of liberty. The topic of how medical professionals can be engaged in both treating and preventing SGBV is an important one that merits specific attention that is beyond the scope of this publication. However, some key points are included here because they may be useful to individuals working in the criminal justice system.

The model endorsed by the WHO, in which the health sector takes an active role in violence prevention in the community, should be applied to places of deprivation of liberty, with medical professionals as partners in a multidisciplinary approach that involves all parties to the system in an effort to prevent and address violence.<sup>287</sup>

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283 Nelson Mandela Rules, Rule 30.

284 Bangkok Rules, Rule 6(e).

285 Bangkok Rules, Rule 7(1).

286 Istanbul Protocol, *op. cit.*, note 61.

287 See, for example, Jörg Pont et al., “Prevention of violence in prison: The role of health care professionals”, *Journal of Forensic Legal Medicine*, 2015, Vol. 34, pp. 127-132.

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### Key considerations for healthcare services in prisons:

- \* Medical services in places of deprivation of liberty should be provided and overseen by state health authorities, independent from law enforcement and the prison administration;<sup>288</sup>
- \* A confidential relationship between healthcare professionals and their patients must be guaranteed to allow persons deprived of their liberty to report threats or incidents of SGBV without fear of retribution;
- \* In addition to documenting SGBV in accordance with the Istanbul Protocol, “secondary prevention measures should be in place immediately after the event is reported or observed,”<sup>289</sup> including counselling and voluntary testing for sexually transmitted infections (HIV, hepatitis and others) and post-exposure prophylaxis. In view of identifying measures to prevent and properly address SGBV, healthcare providers should undertake data collection, which can “help to assess incidence, risk factors and identify persons at risk [of] injury by inter-personal violence.”<sup>290</sup> Such data should be analysed periodically and reported to prison authorities and to the NPM. The data should then be made available to international monitoring bodies, such as the UN Subcommittee on Prevention of Torture.

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### Examples of medical practices and health services in prisons and detention facilities



**Kyrgyzstan and Tajikistan:** The Ministries of Health in Kyrgyzstan and Tajikistan have taken positive steps to integrate the Istanbul Protocol into the training of medical professionals. In both countries, clinical guidance and standardized documentation forms have been introduced, and a large number of medical personnel, including those working in closed facilities, have been trained in the Istanbul Protocol. Work is also ongoing to improve the referral system between medical personnel, legal professionals, law enforcement professionals and civil society organizations.<sup>291</sup>

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288 “Gender and SSR Toolkit: Penal Reform and Gender”, *op. cit.*, note 211, p. 9.

289 Pont *et al.*, *op. cit.*, note 287, p. 130.

290 *Ibid.*

291 See, for example, “Freedom From Torture Newsletter”, NGO Coalitions Against Torture in Kazakhstan, Kyrgyzstan and Tajikistan/Helsinki Foundation for Human Rights (Poland)/International Partnership for Human Rights (Belgium), Issue 5, November 2015.

**United States:** On the basis of the Prison Rape Elimination Act, survivors of SGBV in places of deprivation of liberty have access to the services of rape crisis centres from the community.<sup>292</sup> Such centres are independent of the penitentiary and criminal justice systems and offer specialized counselling, advocacy and support to victims of sexual violence.

### 6.6. Activities and programmes for prisoners

#### Key recommendation

- ✓ All detainees and prisoners should be provided with a range of educational, vocational and recreational activities that may effectively contribute to their rehabilitation and reintegration.
- ✓ Prison administrations should introduce in-prison support programmes on violence reduction for potential perpetrators of violence, and specialized programmes for sex offenders, in co-operation, where possible, with specialist services in the community and NGOs.

Providing prisoners with a range of educational, vocational and recreational activities contributes to their rehabilitation and reintegration. Activities can help to relieve boredom and stress and bring a sense of normalcy to life inside a detention facility, especially when they are offered by organizations from the outside community.

Programmes and activities can also provide safe spaces for respectful interaction between detainees/prisoners. Prison authorities must be attentive, however, to any potential risks of SGBV in the places where these activities take place, especially if men and women prisoners take part in joint activities. Consideration should be given to the risk of prisoners, staff and training providers being abused, particularly if activities take place in situations where oversight is reduced, such as in workplace locations, kitchens or outside prison facilities. Additional oversight may be required if the activities are supervised by non-state agencies.

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<sup>292</sup> Prison Rape Elimination Act, *op. cit.*, note 242.



### Example of mixed activities for men and women prisoners

**France:** After the closure of a workshop in which only female prisoners worked (due to the small number of women and the cost of the supervisory staff), only a workshop for male prisoners remained. The Bordeaux-Gradignan penitentiary initiated an experiment in 2015 to run a single workshop for both men and women. This penitentiary already had combined activities for women and men (choral groups and socio-cultural events) and spent six months discussing and planning for the opening of the joint workshop. The aims of the workshop were to provide women with vocational skills and to integrate them into normal life, in accordance with the European Prison Rules not to discriminate on the basis of gender in the type of work offered. The Rules also require that prisons organize working methods so that they resemble work in the community as much as possible. This is to prepare prisoners for conditions of normal life after they complete their sentences.<sup>293</sup>

The French NPM conducted analysis of the experiment and noted that the idea of opening a joint workshop was initially met with opposition from penitentiary staff, in part due to concerns about the vulnerability of female prisoners.<sup>294</sup> Special attention was given to the protection and supervision of the women, which included assigning a female staff member with experience from the previous workshop to the new setting, installing CCTV cameras, adopting clear instructions on how to behave (such as ensuring that the women prisoners arrived at and departed from the workplace before the men so they did not have to walk past the male prisoners) and instituting a dress code.

According to the NPM assessment, no negative incidents were reported, and the mixed workshop was considered a success by both the staff and women prisoners (some of whom noted that the men were respectful towards them and felt that the experience brought them closer to normalcy).<sup>295</sup> The NPM recommended that further investments be made in the workshop, that the experiment be continued and that it be developed further.<sup>296</sup>

293 European Prison Rule 26.

294 Adeline Hazan, "Enquête sur l'atelier de travail mixte hommes-femmes du centre pénitentiaire de Bordeaux-Gradignan", [Investigation of the mixed-sex workshop of the Bordeaux-Gradignan penitentiary center], Report of the General Inspector for places of deprivation of liberty, 2016, , 2016, <<http://www.cglpl.fr/2016/enquete-sur-latelier-de-travail-mixte-hommes-femmes-du-centre-penitentiaire-de-bordeaux-gradignan/>>.

295 *Ibid*, pp. 2, 9.

296 *Ibid*, p. 9.

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Programmes aimed at prisoners in situations of vulnerability or at potential perpetrators can contribute to effective SGBV prevention. Such programmes could be adapted from existing actions in the community. In this case, they are also an important means of forging links between civil society organizations that address the problem of SGBV and law enforcement and prison authorities. Such programmes can take the form of counselling and support or can be aimed at providing prisoners with alternatives to violent behaviour.

### Examples of programmes addressing dependency



**Kyrgyzstan:** Two psycho-social rehabilitation programmes to address drug and alcohol dependency (the Clean Zone and a 12-step programme called Atlantis) have been introduced into several penitentiary institutions in Kyrgyzstan. Special centres offering the programmes are located away from the general prison population, and prisoners who choose to enrol in the programmes are housed in separate blocks where they have access to trained healthcare practitioners, social workers and psychologists who assist with rehabilitation.<sup>297</sup>

**Georgia:** After undergoing a pilot process, the Ministry of Corrections formally launched a 12-step programme called Atlantis in two prisons in 2016 and also included the programme in the Penitentiary Healthcare Strategy for 2014-2017.<sup>298</sup> Those involved in the programme are led through 12 stages of the rehabilitation process, starting from acknowledging drug dependence. While the impact of such programmes on SGBV has not been assessed, addressing the needs of those dependent on psychoactive substances, by assisting them to overcome addiction, could prevent victimization.

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297 Presentation by Azamat Shambilov, Regional Director, Penal Reform International Office in Central Asia, Kazakhstan, Preventing and addressing sexual and gender-based violence in closed facilities, Practitioners' Meeting, ODIHR, 17-18 October 2016, Warsaw.

298 "Launching of the Psychosocial Rehabilitation Programme 'Atlantis'", Council of Europe, 20 May 2016, <[https://pjp-eu.coe.int/en/web/eap-pcf/news/-/asset\\_publisher/Ptyz15oUnNad/content/launching-of-the-psychosocial-rehabilitation-programme-atlantis-?inheritRedirect=false](https://pjp-eu.coe.int/en/web/eap-pcf/news/-/asset_publisher/Ptyz15oUnNad/content/launching-of-the-psychosocial-rehabilitation-programme-atlantis-?inheritRedirect=false)>.



There are also programmes designed to improve overall prison culture by reducing prison violence and fostering responsibility among prisoners.

### **Example of a programme used to foster non-violence and respect to promote a safer environment**



**Spain:** An educational programme that creates Respect Departments (*Módulos de Respeto*) in prisons was pioneered at a prison in León in 2001 and is now used throughout Spain's prison system.<sup>299</sup> The primary objectives of the Respect Department programme are to establish a climate of coexistence and maximum respect, encourage normalized behaviour and increase the capacity of prisoners to assume personal and community responsibility.<sup>300</sup>

Inclusion in a Respect Department is voluntary, and inmates who enter must sign a contract and comply with the rules and with an individualized treatment programme. The rules cover topics such as personal hygiene and care for their cells and the prison environment, while also addressing respectful behaviour. Violence of any kind – physical, verbal or through gestures – is strictly prohibited in all interpersonal relationships between prisoners, as well as with internal and external staff.

The Respect Departments are a means of countering prison violence and lessening tensions by developing the capacity of inmates to resolve disputes respectfully and peacefully. Prisoners are the main agents of change and must take responsibility for their behaviour and routine tasks. Those who exhibit positive behaviour are offered a more flexible regime and greater freedom. Distinct types of Respect Departments have been developed to work with prisoners from differing backgrounds and with different needs, and to facilitate the coexistence of various groups of prisoners (e.g., drug addicts, young people and foreign nationals). Attention is given to selecting the staff that work with the Respect Departments, as they must also support the objectives of the programme and work with and encourage prisoners in their rehabilitation.<sup>301</sup>

The Respect Departments programme is also being tested by a French penitentiary (Mont-de-Marsan).

299 "The Spanish Prison System", General Secretariat of Penitentiary Institutions, 2011, p. 45.

300 "Módulo de respeto. Módulos penitenciarios para la mejora de la convivencia", Ministry of the Interior, 2007, p. 37.

301 For more information, see the website of the General Secretariat of Penitentiary Institutions at: <<http://www.institucionpenitenciaria.es>> (Spanish) and "The Spanish Prison System", General Secretariat of Penitentiary Institutions, 2011 (English).

### 6.6.1. Programmes that address experiences of gender-based violence prior to detention

#### Key recommendations

- ✓ All survivors of SGBV should be provided with appropriate and professional support and medical treatment, in co-operation, where possible, with specialist services in the community and NGOs.
- ✓ Comprehensive and gender-sensitive treatment and support programmes should be provided for those with mental-health-care needs.
- ✓ The development of SGBV self-help and peer-support groups in prison should be encouraged and supported.

Survivors of SGBV must have access to comprehensive support and assistance, including, but not limited to, legal aid, medical treatment, psychological support and counselling. Services and programmes dealing with SGBV should meet the needs of the individual and be empowering. The Bangkok Rules state that if abuse is detected, whether it occurred before or during detention, prison authorities should provide the victim with access to specialized psychological support or counselling, regardless of whether they choose to take legal action.<sup>302</sup>

Women in places of deprivation of liberty are more likely to have been victims of SGBV in the past and are unlikely to have received much, if any, help.<sup>303</sup> Specialized programmes are critical for reducing potential vulnerabilities faced by inmates in a closed facility. They also form part of a detainee/prisoner's rehabilitation process and can help them prepare for life after release. Specialized help may also encourage victims to come forward to report previous or ongoing abuse.

In order to ensure that prison-based programmes on SGBV are appropriate, they should be tailored to the needs of specific prisoners, make use of international best practices and be taught by individuals who are trained in the subject.

#### Examples of programmes that address past experiences of abuse



**The Altra and STRONG projects:** Under the EU-funded Daphne programme, two multi-country projects were conducted to improve

302 Bangkok Rule 7(2).

303 The Bangkok Rules, *op. cit.*, note 164.

## 6. OTHER MEASURES

support and therapy for victims of GBV in prisons.

The Altra project (Germany, Hungary, Spain) was a gender-focused, in-prison pilot treatment programme for female victims and male perpetrators of domestic violence (2004-2008).<sup>304</sup> The STRONG project (England, Finland, Germany, Lithuania, Poland, Scotland) focused on building the capacity of criminal justice professionals to respond to the needs of marginalized women in prison who had experienced childhood, intimate-partner or other forms of physical and sexual violence (2009-2010).<sup>305</sup>

Some of the common components of the two projects included research into, and analysis of, female prisoners' and ex-prisoners' experiences of GBV and the development of training materials and manuals.

The Altra manual (*Tackling Gender Violence in Prison: Manual of in-Prison Programmes against Gender-Based Violence, 2007*) is a guide for professionals working in the penitentiary field on how to implement prison programmes for women who have been victims of GBV and men who have perpetrated GBV. The manual documents the results of programmes that were piloted in Hungary and Spain, provides methodological guidance and gives concrete examples of exercises that can be used.

The STRONG materials form a training programme for prison officers who are in daily contact with female inmates. The programme explains the different types of GBV and their consequences, how to identify and address GBV and provides models for intervention programmes. National seminars were held in each country, and three prison training sessions were conducted by the Training Institute for Prison and Probation Services in Finland in 2012.

**Georgia:** The NGO Penal Reform International's South Caucasus Office started a project in 2016 to provide support services to women prisoners, probationers and ex-offenders, who had been victims of violence, stigma and discrimination. This is the first programme of its kind in the system to address vulnerabilities of women victims of violence, as required by the Bangkok Rules. Since early 2017, PRI has run the programme together with partner NGOs, providing a number of rehabilitation support services including psycho-social support, legal counselling, business and vocational training,

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304 Materials about the Altra programme are available at <[http://www.surt.org/altra/inicio\\_en.html](http://www.surt.org/altra/inicio_en.html)>.

305 Materials concerning the STRONG programme are available at <<http://philipus.de/daphne-strong.eu/about.php>>.

post-release shelter support for homeless ex-prisoner women, support in maintaining ties with children and similar activities. The programme has targeted around 700 women prisoners, former prisoners, probationers, and up to 60 children.<sup>306</sup>

### 6.6.2. Programmes that target potential perpetrators

#### Key recommendation

- ✓ Prison administrations should introduce in-prison support programmes on violence reduction for potential perpetrators of violence and specialized programmes for sex offenders, in co-operation, where possible, with specialist services in the community and NGOs.

Several countries offer programmes that target individuals in places of deprivation of liberty who are deemed to be at high risk of perpetrating SGBV based on their criminal history (specifically if the prisoner is incarcerated for sexual offences). Other programmes aim, more generally, to reduce violent behaviour by providing training to reduce aggression, address gender stereotypes and foster positive rather than negative masculinities.

#### Examples of programmes for potential perpetrators of violence



**Lithuania:** Since 2010, prisons in Lithuania have been implementing the Seksualiai Nusikaltusių Asmenų Terapijos- Sex Offender Therapy Programme (SeNAT) for prisoners who have committed sexual offences against children. The programme is based on cognitive behavioural therapy and aims to prevent recidivism and promote the reintegration of inmates into the community. Sessions address topics that include self-control, healthy intimacy, anger management, non-sexual friendships with women, women's and victim's rights and victim empathy. Lithuanian prisons also offer behaviour modification programmes that focus on reducing anger, aggression, stress and violent behaviour, such as the One-to-One programme.<sup>307</sup>

306 Information provided by PRI South Caucasus Office.

307 Information provided by Lithuania in response to ODIHR questionnaire; Douglas P. Boer and Vilmantė Gintaraitė, "Sex Offender Therapy Programme for Lithuanian Corrections (SeNAT)", presentation at No More Victims, State Probation Service of Latvia Conference, 15-17 March 2011, Riga.

## 6. OTHER MEASURES

**Poland:** One facility carries out a programme called “I do not agree with violence – Activation of youth in the prevention of sexual violence and victimization. The objective of the programme is to transfer knowledge and positively shape attitudes and help young offenders identify sex-related violence in relationships and threats in cyberspace (stalking, bullying and sexting), as well as to analyse lyrics from modern pop songs that contain content that promotes sex-related violence against women.<sup>308</sup>

**Sweden:** A study circle initiative on violence prevention has been tested in three correctional institutions for juveniles.<sup>309</sup> The Swedish project focuses on how social norms of masculinity can be questioned and altered. It makes use of methods and materials developed under the “Machofabriken” (Macho Factory programme. The Macho Factory is an educational programme developed by three Swedish NGOs aimed at 13 to 25-year-olds. In addressing gender equality and the prevention of violence, the programme includes exercises that focus on prevailing norms of masculinity and encourages participants to reflect on their ideas about sexuality and gender.<sup>310</sup>

### 6.7. Staff recruitment, training and supervision

- ▶ **Copenhagen 1990 (16.4):** “ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”

#### Key recommendations

- ✓ The workforce should be diverse at all levels, including in senior and management posts and among policymakers. Those in senior management positions and members of the judiciary

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308 Information provided by Poland in response to ODIHR questionnaire.

309 Information provided by Sweden in response to ODIHR questionnaire.

310 See the Macho Factory website at: <<http://www.machofabriken.se>>; also see *Mending Inequalities: Men and Gender Equality in the OSCE Region*, Elisabeth Duban, Editor: Jamila Seftaoui. OSCE, Vienna, June 2011. p. 43.

## 6. OTHER MEASURES

should be trained in responding to SGBV and be committed to its prevention in all its forms.

- ✓ Staff at places of detention should receive gender mainstreaming training and opportunities should be provided for training without discrimination.
- ✓ Places of deprivation of liberty should mainstream equality and reflect diversity among staff, including by increasing representation of staff with experience working with minority groups or from a minority background themselves.

The careful selection and proper training of law enforcement and penitentiary staff at all levels is essential for creating an environment in which SGBV is not perpetrated, condoned or tolerated. Staff not only need to be properly recruited and trained, they must also be well-supervised and supported.

All those recruited into the criminal justice system, including healthcare providers, should be committed to preventing SGBV. Candidates should be properly screened during recruitment to ensure that only suitable applicants are recruited. Vetting processes for staff must include background checks to ensure that there is no history of committing SGBV. For example, the National Standards to Prevent, Detect, and Respond to Prison Rape in the United States prohibit facilities from hiring or promoting anyone who has committed sexual abuse in an institutional setting or who has been adjudicated to have done so in the community.<sup>311</sup> Consequently, facilities have the responsibility to perform background checks on current and prospective employees to comply with the PREA.

Increasing the proportion of women staff in prisons is critical to addressing SGBV. Gender-sensitive recruitment methods should be used to increase the number of women staff members. Such methods include the use of quotas or targets removing barriers to female candidates and gender-sensitive interview or review panels.<sup>312</sup>

In addition to improving the representation of female staff, recruitment procedures should also ensure that opportunities are provided to diverse candidates, with the aim of ensuring that the overall staff includes under-represented groups or, at a minimum, staff who have expertise in working with particular minority groups.

The Nelson Mandela Rules require that female prisoners only be attended and supervised by female staff members. This does not, however, preclude the possibility that

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311 "National Standards To Prevent, Detect, and Respond to Prison Rape", Federal Register, <<https://www.federalregister.gov/documents/2011/02/03/2011-1905/national-standards-to-prevent-detect-and-respond-to-prison-rape>>.

312 Further information can be found in the "Gender and Security Sector Reform Toolkit" available at <<https://www.osce.org/odihr/70294>>.

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male staff members may still carry out their professional duties in prisons or parts of prisons that are set aside for women.<sup>313</sup>

Gender mainstreaming in human resources should also extend to the retention of diverse staff, especially women. Attention should be given to mentoring for new recruits, establishing family-friendly workplaces and making sure that there are no barriers to the career advancement of women staff.

Staff diversity should be reflected at all levels, including in senior and management posts and among policymakers. For example, it is important that the boards of men's penitentiaries have gender balance. The Bangkok Rules highlight the importance of capacity-building for women staff to ensure "access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of women prisoners" and a "sustained commitment" by management to prevent any gender discrimination against women staff members.<sup>314</sup>

Good practices in training for law enforcement and penitentiary personnel are addressed under international standards. For example, the Nelson Mandela Rules require that staff be trained on the prohibition of torture, cruel, inhuman and degrading treatment; concepts of dynamic security; the management of violent offenders and diffusion techniques; and specialized training for working with specific categories of prisoners.<sup>315</sup> The Bangkok Rules require that all staff involved in the management of women's prisons receive training on gender sensitivity and be made aware of the prohibition of discrimination and sexual harassment.<sup>316</sup>

Effective training programmes should be designed to address topics such as human rights, gender equality, non-discrimination, tolerance, ethics, risk assessment, and management and communication strategies through a gender-aware lens. At the same time, it is crucial that the subject of SGBV, including its detection and prevention, be explicitly included in training for new recruits before they enter active duty and for existing staff and officers. It is also good practice to provide ongoing and supplementary training on emerging issues that are relevant to preventing and responding to SGBV.

### Key recommendations

- ✓ Staff training manuals should be reviewed and revised to include modules on SGBV, including its definition, as well as the prevention of, and response to, incidents and complaints of abuse.

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313 Nelson Mandela Rules, Rule 81(3).


314 Bangkok Rules, Rules 29 and 30.

315 Nelson Mandela Rules, Rule 76.

316 Bangkok Rules, Rule 32.

- ✓ Staff training should also include modules on gender sensitivity, human rights instruments and working with vulnerable groups.


### Examples of SGBV training for police



**Germany:** Police cadets learn about gender-specific aspects of detention during their training. They also learn about the topic of sexual violence, which is also included in professional ethics training. Some regions have specific curricula on how to handle victims of SGBV and others teach police how to recognize the signs of SGBV and to prevent violence perpetrated by officers.<sup>317</sup>

**North Macedonia:** Several training programmes have been developed in the country on the prevention of ill-treatment in detention and on ethical conduct and respect for human rights. A 10-session training course for staff of penitentiary and juvenile institutions on strategies for solving inter-personal conflicts has also been set up.<sup>318</sup>

### Examples of SGBV training for penitentiary staff



**Bulgaria:** Basic and continuing training for penitentiary staff on tolerance and non-discrimination has been carried out in three locations, with the aim of improving the management of offenders from vulnerable groups, including Roma.<sup>319</sup> Roma staff members were included in the training programme.

**Estonia:** SGBV is part of the basic training for prison officers. Emphasis is placed on preventing and identifying signs of violence.<sup>320</sup>

**Germany:** SGBV training varies in different federal states. Some prison staff receive training on managing sexual violence, including violence directed at female staff, gender-based violence and homophobia. Basic training includes subjects such as de-escalation of

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317 Information provided by Germany in response to ODIHR questionnaire.

318 Training materials can be accessed from the programme website: <<http://www.coe.int/t/DGI/CRIMINALLAWCOOP/>>.

319 Further information is accessible from the website of the Ministry of Justice of the Republic of Bulgaria under Norway Grants projects: <[http://nfm.mjs.bg/NFMs/EN/SitePages/rez4\\_pr1\\_en.aspx](http://nfm.mjs.bg/NFMs/EN/SitePages/rez4_pr1_en.aspx)>.

320 Information provided by Estonia in response to ODIHR questionnaire.



violence, conflict resolution, anger management and intercultural engagement.<sup>321</sup>

**Italy:** The training curriculum for corrections officers includes courses on human rights, gender equality and specific courses on how to work with LGBTI prisoners. The curriculum also includes courses for managing offenders who have been convicted of paedophilia.<sup>322</sup>

**Serbia:** Staff of the directorate for enforcement of criminal sanctions receive training on the identification and prevention of SGBV, within a module on gender equality.<sup>323</sup>

**Ukraine:** The Women's Information Consultative Centre NGO provides training on gender issues for the Centre of Competence at the Bila Tserkva Professional Training School for Prison Personnel. The training addresses the topics of tolerance, non-discrimination and SGBV.<sup>324</sup> The NGO provides training to all personnel working in units with mothers and children on good practices for working with female prisoners.<sup>325</sup>

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### **Case Study: Staff recruitment, screening, education and training in Norway**

Norwegian experts have cited the high degree of professionalism of their corrections staff as a factor that has made them effective at preventing SGBV. Even though the Norwegian correctional educational system does not have a dedicated training course on SGBV in places of deprivation of liberty, the main training programme develops staff understanding and respect for human rights. All correctional staff in Norway are trained by the Correctional Service of the Norway Staff Academy (*Kriminalomsorgens Høgskole Og Utdanningscenter - KRUS*). The course lasts two years and will soon be extended to three years, at which point it will become a bachelor's degree programme. KRUS aims to develop professional correctional staff that adhere to four core values: transparency, respect, professionalism and engagement.<sup>326</sup>

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321 Information provided by Germany in response to ODIHR questionnaire.

322 Information provided by Italy in response to ODIHR questionnaire.

323 Information provided by Serbia in response to ODIHR questionnaire

324 Presentation of Olena Suslova, Women's Information Consultative Centre, Preventing and addressing sexual and gender-based violence in closed facilities, Practitioners' Meeting, OSCE/ODIHR, 17-18 October 2016, Warsaw.

325 The work was part of the Swiss-Ukrainian Project Support to Penitentiary Reform in Ukraine (2009-2012), implemented by several Ukrainian organizations and Penal Reform International.

326 KRUS Strategic Plan, 2016-2019.

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The admissions process for KRUS is competitive, with some 1,700 applicants per year for 175 places. After submitting a written application, around 500 candidates are rigorously screened through written and physical examinations and interviews. Although there is no quota for female applicants, KRUS aims for a gender-balanced student body: 46 per cent of the 2016 entering class were women. The high number of female students is reflected in the proportion of female correctional staff working in Norwegian prisons (around 40 per cent).

The Curriculum for Prison Education provides a total of 120 credits and covers five topics: criminology; law; ethics and professionalism; safety and security; and social work; and reintegration.<sup>327</sup>

Within the KRUS curriculum, several courses have particular relevance to addressing SGBV. These include the following:

### **Ethics and Professionalism**

- ▶ Course 1: The values behind criminal law and human rights
- ▶ Course 2: Moral philosophy
- ▶ Course 3: Cultural understanding
- ▶ Course 4: The professional exercise of power and collaboration

### **Safety and Security**

- ▶ Course 1: Safety and security rules
- ▶ Course 2: Practical safety and security work
- ▶ Course 3: Mapping and documentation in safety and security work
- ▶ Course 4: Communication and conflict management
- ▶ Course 5: Use of force
- ▶ Course 6: Ethical safety and security rules

### **Social Work and Reintegration**

- ▶ Course 1: The method of social work in prison
- ▶ Course 2: Understanding the process of change that inmates undergo
- ▶ Course 3: Remedying the adverse effects of isolation
- ▶ Course 4: Reintegration
- ▶ Course 5: Mental disorders, self-harm and suicide, ADHD, violence and addiction
- ▶ Course 6: Professionalism in the role of prison officer

The curriculum combines theory and practical skills, and places emphasis on teamwork and collaborative learning. Students are encouraged to be reflective about their role as prison officers and the ethical standards they must adhere to. Students learn

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327 Adopted December 2015 and available at <<http://www.krus.no/fengselsbetjent-studiet.291011.no.html>>.

## 6. OTHER MEASURES

theories of psychology and social work as well as information about particularly vulnerable groups of inmates. Various community groups also lecture the students.<sup>328</sup>

The screening process for students remains rigorous throughout their studies. In addition to their coursework, students are regularly observed by senior officers, who discuss their progress and evaluate their behaviour, including how they treat others and whether they are interactive or withdrawn. Students receive full pay during their training period and undertake several placements. These placements provide them with work experience, which helps to ensure that they will be hired after completing the course. These measures help to shape perceptions and make the job of a correctional officer one that is desirable and respected in Norway.

Employed correctional staff receive continuing professional development from KRUS. The organization offers five to six courses per month on topics such as conflict and risk management, leadership development and safety. These courses help to ensure that the correctional service can address any newly emerging issues and ensure that staff are provided with ongoing support.

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Training to identify and respond to SGBV should be extended to all relevant staff working in places of deprivation of liberty. This could also include social workers or therapists who interact directly with detainees/prisoners. In Turkey, for example, the topic of SGBV has, since November 2016, been included in training for psychologists and social workers working in penitentiary institutions.<sup>329</sup>

### 6.8. Complaints mechanisms, response and investigation

#### Key recommendations

- ✓ Policy- and lawmakers should ensure that there are written guidelines that detail how a detainee/prisoner can complain and the steps to be taken when a complaint of SGBV is received.
- ✓ Procedures should set out timelines for response/investigation, as well as measures to be taken to protect the safety and maintain confidentiality of the victim and any witnesses.
- ✓ Clear measures should be established against prison managers or staff members who are aware of incidents of SGBV but fail to take action to prevent or respond appropriately.

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328 *Ibid.*

329 Information provided by Turkey in response to ODIHR questionnaire.

## 6. OTHER MEASURES

- ✓ Prison administrations should inform all detainees/prisoners and staff about complaints mechanisms and ensure that they can make complaints about SGBV in full confidentiality and without fear of retaliation or other negative consequences.
- ✓ Systems should be introduced whereby third parties can make complaints on behalf of prisoners.

SGBV is under-reported in places of deprivation of liberty for a number of interconnected reasons. Many of the factors that deter victims from reporting abuses can be addressed by establishing responsive complaint mechanisms that are supported by clearly defined and well communicated policies. The following table presents some of the key barriers to reporting and how they can be mitigated when reporting processes are well-designed.

<b>Barrier to reporting</b>	<b>Measures to address barriers</b>
Absence of independent or effective complaints mechanisms/lack of information about, or trust in, available mechanisms	<ul style="list-style-type: none"> <li>* Provide various means of conveying reports of SGBV confidentially (e.g., written, by telephone hotline, in person.).</li> <li>* Provide mechanisms for staff, including medical personnel, to make reports when they become aware of signs of SGBV.</li> </ul>
Fear of retaliation or reprisals	<ul style="list-style-type: none"> <li>* Respect the confidentiality of the person reporting the issue.</li> <li>* Allow anonymous complaints to be made and ensure those complaints are not censored.</li> <li>* Accept reports from victims, as well as witnesses and third parties, such as family members, lawyers, monitoring bodies or CSO representatives.</li> <li>* Provide immediate protection and supervision for the victim from the moment they report abuse.</li> <li>* Ensure safe disclosure for all individuals</li> </ul>

## 6. OTHER MEASURES

Stigma and feelings of shame or embarrassment

- \* Provide victims with options about where they can address complaints, ensure both internal and external oversight.
- \* Allow victims to choose the person to which they would feel most comfortable disclosing their complaint (e.g., a staff member of the same gender, person of the same religious or cultural background, medical professional, lawyer.)
- \* Provide specialized support and assistance for victims as soon as a complaint form has been completed. The filing of a report should trigger specialized support and assistance for victims (including physical and mental healthcare, counselling, legal aid and other support).

### Examples of complaints and reporting processes



**Denmark:** Under Danish law, the investigation of SGBV is not dependent on there being a complaint from the victim. According to the Administration of Justice Act, Danish police can initiate an investigation into SGBV based on a complaint or if they have a reasonable presumption that such abuse has taken place. Police investigations may also continue even if a complaint is withdrawn.<sup>330</sup>

**Germany:** Prisoners in Germany can submit complaints of SGBV to prison administrations, prison service providers (social workers, educators, psychologists, medical personnel, etc.), the police, prosecutor's office, courts, the Ministry of Justice, state parliaments, the NPM, the media and international bodies. When a facility becomes aware of an incident of SGBV, criminal cases are filed *ex officio*.<sup>331</sup>

**Latvia:** Detainees in Latvia can report abuse through a telephone hotline or via the mail system. When a complaint of SGBV is made, an interdisciplinary team comprised of medical and psychological professionals reviews the case.<sup>332</sup>

330 Information provided by Denmark in response to ODIHR questionnaire.

331 Information provided by Germany in response to ODIHR questionnaire

332 Krasovska, *op. cit.*, note 221.

## 6. OTHER MEASURES

Once any report of SGBV is made, the complaint should be registered and an investigation by competent and independent bodies initiated.<sup>333</sup> Clear lines of authority between various groups (e.g., correctional officers, police, prosecutors, ministries of justice, national referral mechanisms or ombudsperson institutions) should be established to facilitate this process. Specific rules apply in cases of complaints of torture and other ill-treatment in line with the Convention against Torture and the Istanbul Protocol. These should be adhered to.

All complaints of SGBV in places of deprivation of liberty must be investigated without discrimination against the victim and in the same manner as if the crime had occurred in the community. Domestic criminal procedures apply to SGBV in closed facilities, as do international standards for investigating violence against women/gender-based violence. International standards require, *inter alia*, that states exercise due diligence to effectively investigate and prosecute violence against women and that the victim's safety, privacy and dignity be protected at all stages of the criminal justice process. The victim's inability or unwillingness to participate in an investigation or prosecution process should also not prejudice the case.<sup>334</sup>

The obligation of states to ensure that investigation and prosecution of GBV does not depend on reports or complaints from victims (*ex officio* proceedings) is especially relevant in places of deprivation of liberty. In closed facilities, there are particular concerns about retaliation or retribution, inaction and corruption. Therefore, the burden of initiating a legal proceeding and bringing perpetrators to justice should not be placed wholly on the victim. *Ex officio* proceedings, in which authorities take a proactive approach, are recognized as a means to overcome victims' "feelings of shame, fear and helplessness [that] lead to low numbers of reporting and, subsequently, convictions."<sup>335</sup> At the same time, robust mechanisms to protect victims of violence should be in place, including but not limited to, confidentiality of information and sources during and after the investigation stage.

### Example of actions to address sexual harassment in prison



In 2015, the Croatian ombudsman for gender equality reviewed an incident in which a male prisoner was verbally abusive towards and kissed the hand of a female staff member. A male judicial police officer and prison staff member had also made jokes of a sexual nature

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333 Bangkok Rules, Rule 25.

334 See Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, General Assembly Resolution 65/228 (annex).

335 Council of Europe, 2011, Explanatory Report to the Council of Europe Convention in preventing and combating violence against women and domestic violence, CETS 210, p. 47.

with the prisoner about what he had done and did so in the presence of the female staff member.<sup>336</sup> The ombudsman found that the actions of the prisoner and of the male staff member amounted to sexual harassment as defined by the Croatian Law on Gender Equality, which prohibits “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that occurs with the purpose or effect of violating the dignity of a person, in particular when creating an unpleasant, hostile, degrading or offensive environment”.<sup>337</sup>

### 6.9. Oversight and monitoring

#### Key recommendation

- ✓ Policy- and lawmakers should review the terms and scope of internal oversight mechanisms to ensure that they include the issue of SGBV, where it is safe and appropriate to do so, and members of such bodies receive training on the prevention of SGBV.
- ✓ Internal monitoring bodies should be provided with adequate technical and financial resources and should be able to involve specialists in dealing with survivors of SGBV.
- ✓ Protocols for responding to and investigating allegations of SGBV should be reviewed, including in terms of maintaining accurate and confidential documentation and the protection of evidence.
- ✓ Crimes occurring in places of detention should be investigated and prosecuted as they would be if they had occurred in the community.
- ✓ Police custodies and prison administrations should ensure that that all complaints of SGBV are investigated according to established procedures.
- ✓ Police custodies and prison administration should follow up on the findings and recommendations of all investigations and conduct internal reviews into the factors that led to the abuse, including the specific internal factors, in order to prevent its recurrence.

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336 Information provided by Croatia in response to ODIHR questionnaire.

337 Act on Gender Equality, Article 8.

## 6. OTHER MEASURES

- ✓ Ensure that anyone found responsible for acts of abuse is disciplined and co-operate with judicial authorities if formal investigations are launched.
- ✓ Legal and judicial professional should carefully consider whether serious incidents of SGBV, including rape cases, should be prosecuted as sexual violence or as forms of torture and other ill-treatment. Such decisions should be made on a case-by-case basis and according to the wishes of the victim.

Relying solely on reports about SGBV from victims or others is not conducive to fully uncovering or addressing the problem. Therefore, internal inspections and independent external oversight are essential for detecting misconduct and incidents of abuse. Regular and independent monitoring also plays an important preventive function with regard to torture and other ill-treatment, and SGBV more generally.

Those who work in places of deprivation of liberty must report suspicions of abuse to superiors and, when necessary, must provide the information to other authorities that have remedial powers.<sup>338</sup>

Other actors in the criminal justice system exercise important oversight functions. The prosecutor's role to oversee police investigations includes a duty to ensure that ill-treatment and torture and thus SGBV is not perpetrated during interrogations or, indeed, at any other time during the investigation period. Judicial oversight of prison conditions can also be an effective oversight mechanism, especially if it is linked to the court's remedial powers. Some OSCE participating States have models that include judicial oversight of prisons. In Serbia, all decisions made by prison management that are relevant to prisoners' rights are subject to judicial review.

External oversight mechanisms can include inspections and monitoring activities conducted by a number of independent bodies, including NPMs, NHRIs, civil society organizations, specialized groups working with particular types of prisoners, international bodies and Special Rapporteurs.

### Examples of monitoring and oversight functions



**Canada:** Oversight over the Canadian federal prison system is managed by several independent bodies, including the Correctional Investigator of Canada, the Canadian Human Rights Commission and

338 "Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment", United Nations, Principle 7.



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the Auditor General. The Correctional Investigator of Canada serves as an ombuds institution for federally sentenced offenders. The office reviews individual complaints, conducts independent investigations and makes recommendations to “ensure safe, lawful and humane correctional practice.”<sup>339</sup>

**Russian Federation:** Public oversight commissions are civil society organizations that exercise monitoring functions over places of detention (police custody, pre-trial/remand detention centres and penal colonies) and provide assistance to detainees.<sup>340</sup> The commissions have the right to freely enter places of deprivation of liberty to assess the human rights situation and to provide information to the authorities about any violations. The work of the public oversight commissions is regulated by a number of laws.

The OPCAT requires that state parties establish a specialized national independent monitoring body (an NPM) for the prevention of torture and other ill-treatment. The NPM is an important institution for preventing, detecting and reporting on the incidence of SGBV in places of deprivation of liberty. Through regular visits to facilities, NPMs also receive complaints from individuals deprived of their liberty and make recommendations to the relevant authorities about how to improve conditions.<sup>341</sup>

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### **Case Study: The Georgian National Preventive Mechanism**

The Georgian criminal justice system is undergoing reforms aimed at improving the treatment of detainees and prisoners. Between 2004-2013, Georgia’s zero-tolerance policy towards crime resulted in one of the highest *per capita* prison populations in the world.<sup>342</sup> In 2012, a former prison guard leaked videos showing physical and sexual violence perpetrated by prison staff and inmates against male prisoners, including juveniles. The information about abuse led to public demonstrations across the country and the dismissal and arrest of prison authorities.

A national preventive mechanism (NPM), under the office of the Public Defender of Georgia, was established in 2009, but since the incidents of abuse came to light, the NPM has been strengthened in several ways. Its working methods have been modified,

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339 Office of the Correctional Investigator, Government of Canada, <<http://www.oci-bec.gc.ca/index-eng.aspx>>.

340 For more on public oversight commissions in Russia, see <<http://onk.su>>. Last accessed December 2019.

341 At the time of writing, 41 OSCE participating States had ratified OPCAT, and 39 have established NPMs.

342 From 2003 to 2010, the number of prisoners increased by 300 per cent. The per capita figure was reported to be 538 prisoners for every 100,000 people in 2010. See “Crime and Excessive Punishment: The Prevalence and Causes of Human Rights Abuse in Georgia’s Prisons”, Open Society Georgia Foundation, 2014, p. 13, <[http://www.osgf.org/files/2015/Publication/Final\\_Report\\_ENG.pdf](http://www.osgf.org/files/2015/Publication/Final_Report_ENG.pdf)>.

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and information has been disseminated about the conditions in places of deprivation of liberty through a range of publications (annual reports, visit reports, special thematic reports and informational bulletins).<sup>343</sup> In 2014, an Advisory Council to the NPM was established to support the NPM and to improve communication with various stakeholders. The NPM also co-operates closely with civil society organizations (which do not have an independent right to monitor places of deprivation of liberty) to document incidents and overall situations in places of deprivation of liberty and to assist detainees in accessing legal and other advice.

In 2015, after the NPM proposed reforms that would permit its staff to take photographs during visits to places of deprivation of liberty, the Prison Code was amended, and the Ministry of Corrections issued regulations on the use of photography in places of detention. Photography is now allowed for the purposes of investigation only, not for publication, and photographs are limited to pictures of detention conditions and of prisoners, subject to prisoners' consent. The NPM has elaborated guidelines to ensure confidentiality and a gender-sensitive process for photographing prisoners' injuries. The new regulations are expected to be especially helpful in the documentation of torture and other ill-treatment, and they should also enhance the monitoring and prevention functions of the NPM.

The NPM and civil society experts have highlighted areas where further reform is needed, such as developing a dynamic security model and establishing an independent investigative body to deal with allegations of torture and other ill-treatment in prisons. Both the NPM and civil society organizations have brought attention to the needs of especially vulnerable, but often invisible, groups, including gay, bisexual and transgender people in prisons for men. The NPM has recommended that the Ministry of Corrections<sup>344</sup> develop guidelines to ensure the prevention of discrimination against detainees based on sexual orientation and gender identity.<sup>345</sup>

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External oversight can also refer to the general practice of increasing the overall accessibility of closed institutions to actors from outside the criminal justice system. The practice of opening closed facilities to diverse professionals, or “bringing the outside in,”<sup>346</sup> is a means of improving monitoring and decreasing the risk that human rights abuses will remain hidden. In addition to lawyers, family members and friends, persons deprived of their liberty can have regular contact with a wide range of professionals from the community, including healthcare providers, educators, religious or spiritual leaders and other service providers.

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343 NPM reports are available online in both Georgian and English at <<http://www.ombudsman.ge/eng/preventsiiis-erovnuli-meqanizmi>>.

344 The Ministry of Corrections was integrated into the Ministry of Justice in 2018.

345 “Annual Report: National Preventative Mechanism”, Public Defender of Georgia, 2015, p. 152.

346 Lisa A. Kort-Butler & Sarah E. Malone, “Citizen volunteers in prison: bringing the outside in, taking the inside out”, *Journal of Crime and Justice*, 10 October 2014, <<https://www.tandfonline.com/doi/abs/10.1080/0735648X.2014.969293>>.

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### Practices that improve the effectiveness of inspections and monitoring to detect SGBV include:

- \* Making use of unannounced visits;
  - \* Ensuring that visits are of sufficient length so that monitors can build trust with interviewees;
  - \* Structuring visits so that detailed and individual confidential discussions with detainees/prisoners can take place;
  - \* Ensuring gender balance and diversity in the composition of inspection and monitoring teams;
  - \* Screening for monitors and inspectors, as well as training to ensure gender sensitivity and knowledge of SGBV (members who specialize in SGBV should also be included in teams);
  - \* Structuring visits to ensure that they can uncover incidents of SGBV committed by staff or by inmates;
  - \* Monitoring to ensure that policies, practices and mechanisms exist within the institution that could be used more effectively to prevent SGBV from occurring; and
  - \* Ensuring that all team members are aware of their duties and powers and to whom they report.
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### 6.10. Raising public awareness

#### **Key recommendation**

- ✓ Policy- and lawmakers should support and participate in public discussions about SGBV in places of detention and the barriers to reporting/investigating abuse.
- ✓ Whenever possible, inter-agency working groups should be established to develop strategies to raise awareness of the problem of SGBV in closed facilities.
- ✓ Prison administrations should encourage staff, prisoners, family members, service providers and relevant experts to participate in surveys, discussions and action groups focusing on the prevention of, and response to, SGBV in places of detention.
- ✓ Detention facilities should reach out to community organizations working with survivors to support awareness-raising initiatives.

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- ✓ All stakeholders should be allowed to submit feedback on the effectiveness of particular approaches to prevent SGBV.

In addition to the invisibility of the problem of SGBV in places of deprivation of liberty, the general public can be dismissive or even flippant about the issue. Many people who have no experience of life in a detention facility are at least aware of the jokes about rape in prison.<sup>347</sup> This illustrates discomfort with the topic, while also demonstrating that places of deprivation of liberty may be one of the last settings in which SGBV is still considered “acceptable” or “normal.” There is a clear need to counter stereotypes about SGBV, and particularly the stereotype that “rape culture” is an inevitable consequence of detention, that abuse should be part of a person’s punishment and that detainees or prisoners’ complaints will not be taken seriously or believed, especially over the word of staff.

The Bangkok Rules recommend providing the media and the general public with factual information about the situation of women in the criminal justice system, reliable data about the matters addressed by the rules and about their implementation.<sup>348</sup> This practice can help to sensitize policymakers and the public about SGBV and the needs of detainees and prisoners, as well as help to reduce the stigma surrounding the issue. Information relevant to male inmates and those in situations of vulnerability should be shared in the same manner.

At the same time, caution should be exercised when working with the media to ensure that confidentiality is maintained, and particularly if the media are reporting on specific incidents or about specific detainees/prisoners. Care must also be taken to ensure that the topic of SGBV is depicted accurately and not sensationalized.

By engaging former detainees/prisoners who are survivors of SGBV in advocacy and awareness-raising activities on the basis of their willingness and consent, campaigns will not only be more effective but also more likely to be conducted sensitively. There are examples from Norway, Ukraine and the United States of former prisoners working closely with CSOs on outreach activities, training and policy-making. Due care should be exercised to avoid re-traumatization.

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347 The United States National Standards to Prevent, Detect, and Respond to Prison Rape note that, “In popular culture, prison rape is often the subject of jokes; in public discourse, it has been at times dismissed by some as an inevitable — or even deserved — consequence of criminality.”

348 Bangkok Rules, Rule 70.



### Examples of public awareness campaigns

**North Macedonia:** In 2015, the Ministry of Internal Affairs conducted a campaign to provide information to the public about their rights in relation to police proceedings, developments in the prevention of police violations and complaint mechanisms. The campaign also served to raise consciousness among police officers about their duty to respect the rights of persons deprived of their liberty.<sup>349</sup> The campaign included pocket-sized brochures for citizens and an informational video.<sup>350</sup>

**United States:** The NGO Just Detention International organizes an annual campaign called Words of Hope, in which members of the public write holiday messages to prison-rape survivors. The organization aims to send at least 10,000 cards each year.<sup>351</sup> The initiative is not only a way to provide comfort to prisoners and remind them that they are not alone, but it is also a means of drawing public attention to the issue of prison rape.

**Ukraine:** A similar campaign has been carried out in Ukraine in which juvenile prisoners take part in a competition to design holiday cards. The winning cards are sent to government officials with information about the child.

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349 Council of Europe Programme Office in Skopje, Final Brochure of the European Union/Council of Europe Joint Programme "Capacity Building of the Law Enforcement Agencies for Appropriate Treatment of Detained and Sentenced Persons", p. 10.

350 The video, in Macedonian language, is available at <<http://www.mvr.gov.mk/vest/347>>.

351 Further information is available on the website of Just Detention International: <<http://justdetention.org/hope>>.

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# 7. CONCLUSION

Sexual and gender-based violence in places of deprivation of liberty is preventable and should never be tolerated. This publication has sought to dig deep into this human rights violation and has demonstrated the need to raise awareness of its pervasiveness, enhance research and implement measures for its prevention.

Research and data obtained by ODIHR from surveys and administrative records suggests that there is considerable variation in the prevalence of SGBV in places of detention. Some facilities have reputations for being especially harsh or dangerous. The replies submitted by participating States to ODIHR's questionnaire demonstrate that there are various ongoing reform processes, but that these differ from country to country.

The safety of everyone deprived of their liberty, as well as of staff, service providers and visitors, must be a priority for policymakers and practitioners, including at the senior management level. Gender-sensitive approaches should be applied to all measures used to reduce the risks of SGBV, and staff must be trained accordingly. Well-managed facilities with professional staff are capable of reducing SGBV considerably. The challenge is building capacity to that end and ensuring that SGBV prevention is prioritized.

The UN has pointed out that when a person is detained, the state “assumes a heightened duty of protection by severely limiting an inmate’s freedom of movement and capacity for self-defense.”<sup>352</sup> Authorities must consider the various factors that increase an individual’s vulnerability to SGBV and take special measures to address those factors. Those who are deprived of their liberty should also be protected through all stages of the criminal justice system.

As prescribed by the Mandela Rules, measures to protect and promote the rights of particular groups of prisoners should not be regarded as discriminatory.<sup>353</sup> Indeed, as the UN Subcommittee for the Prevention of Torture has pointed out, “the principle of equality and non-discrimination not only results in the prohibition of different treat-

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352 UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the UN General Assembly, 5 September 2006, A/61/311, para. 51.

353 United Nations Standard Minimum Rules for the Treatment of Prisoners, (Rule 2).

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ment when it is arbitrary [...] but also implies the obligation to establish differentiated measures when those are reasonable, necessary and proportional, precisely in order to guarantee human rights.”<sup>354</sup>

Reform measures based on core values, such as using detention as a last resort, prioritizing human rights, principles of non-discrimination and the rehabilitative function of detention, have contributed to the reduction of many forms of violence and abuse in the OSCE region. But it is also clear that much more needs to be done at both the national and local levels in all countries to tackle the problem.

The recommendations in this publication serve as guidance for actions to be undertaken to step up OSCE participating States’ monitoring and reporting efforts in relation to SGBV. They should also help them to develop comprehensive methods for upholding human rights by creating appropriate safeguards.

This publication serves as a first step towards more detailed guidance and tools on the topic for practitioners, including both state authorities and non-governmental organizations. ODIHR will continue to raise awareness of this topic, in line with its mandate, and provide support to OSCE participating States willing to eradicate sexual and gender-based violence in places of deprivation of liberty.

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<sup>354</sup> Eighth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 26 March 2015, para. 59.



## ***Annex 1. Key Recommendations***

### ***UNDERSTANDING THE NATURE AND EXTENT OF THE PROBLEM***

#### **Relevant ministries/policy- and lawmakers**

- Dedicate adequate resources to conduct research and analyse existing information on the occurrence of SGBV in places of detention, including police stations, pre-trial detention facilities and correctional facilities.
- Lead, support and facilitate studies into vulnerability to SGBV in places of detention, including the vulnerability of particular groups, vulnerability as a consequence of detention and locations in which SGBV is most likely to occur.
- Institutionally acknowledge and condemn the existence of discriminatory attitudes and SGBV in places of detention and develop action plans to tackle the root causes of the problem and to protect those at risk.
- Evaluate, or allow an external evaluation of, existing methods of preventing and responding to SGBV to determine their effectiveness.
- Ensure that discussions concerning SGBV involve staff from all relevant ministries, practitioners in places of detention, prisoners' associations and human rights and gender experts from civil society.

#### **Police and prison authorities**

- Facilitate the work of monitoring bodies, including confidential, unhindered access to all detainees/prisoners.
- Collect data on incidents of SGBV disaggregated by gender, the numbers of complaints received, patterns of abuse against particular groups, and statistics on the types of injuries observed, as well as details of any follow-up action taken.
- Make this data available to the central prison administration/relevant ministry on a regular basis, provided the information is anonymized to protect the identity of the individuals concerned.
- Allow and encourage staff and detainees/prisoners to safely and confidentially provide input into discussions on the prevalence of SGBV.
- Establish links and partnerships with organizations working on SGBV in the community, including those specialized in working with people in situations of vulnerability and survivors of violence.

### ***REVIEWING LAW, POLICY AND PROCEDURES***

#### **Relevant ministries/legislators**

- Ensure that domestic legislation clearly defines and prohibits SGBV in places of detention.
- Review existing law, policy and procedures to identify areas where SGBV prevention and protection can be strengthened, including provisions on alternatives to detention. Amend any provisions that tolerate or encourage SGBV.
- Ensure that legislation regulates investigation and prosecution procedures with regard to SGBV in places of detention, with a view to ensuring that acts of violence are prosecuted in the same manner they would be if perpetrated in the community.
- Ensure that law and/or policy frameworks include a broader regulatory scope on SGBV that covers such topics as data collection and assessment/evaluation, training and funding; include recognition that both women and men can be victims of SGBV, while also allowing for specialized procedures or remedies that are gender-based.
- Mandate in law that training measures to combat SGBV will be conducted for relevant authorities.
- Introduce gender-sensitive management policies and a staff code of conduct that addresses SGBV and takes a zero-tolerance approach to violence and discrimination.
- Liaise with specialist organizations including human rights and women's organizations as well as prisoners' rights organizations on how to formulate policies and guidelines to best support the needs of vulnerable groups.

### ***DIVERSIONARY MEASURES AND ALTERNATIVES***

#### **Relevant ministries/legislators**

- Introduce or improve systems to monitor and evaluate the use of detention, including pre-trial detention, and the use of non-custodial measures, with a particular focus on groups who may be particularly vulnerable to SGBV.
- Develop standardized criteria to enable police and judicial authorities to consider diversionary measures and alternatives to detention, taking into account the personality and background of the accused, including previous victimization, risk of further abuse and the crime of which they are accused.
- Ensure that police and prosecutors are authorized to divert individuals away from the criminal justice system, taking into account the nature and gravity of the offence, and the potential risk of violence in detention.
- Allocate resources to devise suitable alternatives for those at risk of SGBV, including victims of abuse. Such alternatives should include support and counselling, where needed.

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### **Judicial authorities**

- To prevent further victimization, take into account mitigating factors when considering pre-trial detention, such as a history of victimization, including through submissions by third parties, including victims/survivors' organizations.
- Consider gender-based vulnerability, including the particular situation of juvenile female offenders. Whenever appropriate, consider the intersections with torture while listening to the testimonies of victims/witnesses and defendants.

### ***COMPREHENSIVE NEEDS AND RISK ASSESSMENTS***

#### **Relevant ministries/policy- and lawmakers**

- Develop or adapt assessment tools that include clear criteria on identifying risks that someone may become a victim or perpetrator of SGBV, in consultation with relevant specialists, including from civil society.
- Ensure that there are policies in place to conduct SGBV risk and needs assessments in relation to staff members as well as detainees/prisoners, including background checks on prospective and current employees.
- Regularly evaluate the effectiveness of such assessment tools with a particular focus on the prevention of SGBV.
- Integrate risk and needs assessments into sentencing guidelines and train judges and prosecutors accordingly.

#### **Police and prison administrations**

- Conduct full assessments of the risks of SGBV that each detainee/prisoner may present to themselves, staff, other detainees/prisoners and visitors, and allocate them accordingly. Assessment teams should be gender-balanced and include experts on SGBV if possible.
- Upon arrest or admission to prison, identify those who are potentially at risk of SGBV, including victims of prior abuse, and introduce immediate protection measures.
- Make staff aware of the risks of SGBV on a need-to-know basis, while protecting confidentiality as a priority; liaise with appropriate agencies to develop care and support plans.
- Ensure that protection measures do not present further exposure to discrimination and abuse, stigmatization or lead to a deterioration in detention conditions.
- Ensure that detainees/prisoners are able to provide input into their risk and needs assessments; regularly review and update assessments.
- Ensure that all relevant staff, including medical staff, receive comprehensive training on how to identify the risks of SGBV or of a person becoming a perpetrator of such violence.

### ***REDUCING RISK IN PARTICULAR SITUATIONS***

#### **Legislators/policy- and lawmakers**

- Recognize that the longer one is held in pre-trial detention the higher the risk of SGBV and take this into consideration, when regulating the length of pre-trial detention.
- Review existing questioning methods and practices in order to prevent SGBV, including ensuring there are clear procedures on methods used.
- Ensure that safeguards against SGBV are applied equally during detainee/prison transfers, including when non-state agencies are responsible for the transportation of detainees/prisoners.
- Staff of these agencies should receive appropriate training and must be held equally accountable for allegations of SGBV.
- Establish a regulatory framework on the use/conduct of body searches in accordance with human rights standards, including the principles of legality, necessity and proportionality. Encourage the development and use of alternative methods of screening.
- Consider SGBV prevention in the design of new detention facilities, including observation arrangements, living quarters and the location of medical facilities.

#### **Police and/or prison administrations**

- Ensure that all those arrested have prompt and confidential access to a lawyer, including during interrogation, and can notify their family, or other contact person, about their arrest, their whereabouts and potential violations of their rights, including SGBV.
- Maintain full records of all interrogations, including the identity of all those present.
- Provide all officials involved in interrogation with proper training in interviewing suspects, including in relation to the prohibition of SGBV.
- Take into account the SGBV-specific results of risk and needs assessments when transferring detainees/prisoners.
- Ensure adequate safeguards against SGBV for those undergoing any form of punishment and those held in segregation.
- Provide all staff with training on criteria and procedures for conducting body search procedures, including gender-sensitive training.
- Ensure that only staff of the same gender supervise toilet, washing and dressing areas.
- Ensure the effective separation of men and women detainees/prisoners, and minors and adults.
- When deciding allocation of transgender person to either a male or female prison, ensure consultation with the concerned individual and make decisions on a case-by-case basis taking into account safety considerations and the wishes of

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the individual. Introduce CCTV cameras where possible to prevent SGBV or to collect evidence. The use of CCTV should be properly regulated to ensure that the right to privacy is fully respected. CCTV should, therefore, only be used for protective or investigatory purposes and should not replace dynamic methods of security.

### ***REDUCING RISK FOR PARTICULAR GROUPS/INDIVIDUALS***

#### **Legislators/policy- and lawmakers**

- Ensure that non-discrimination and gender sensitivity are mainstreamed and the specific needs of at-risk groups are addressed throughout all staff training modules.
- Identify specific strategies to mitigate the risk of SGBV for particular at-risk groups and those in situations of vulnerability. Consult relevant experts and survivors of SGBV when designing such strategies.
- Ensure that personal searches of detainees/prisoners are carried out by staff members of the same gender.
- Ensure that searches and allocation of transgender and intersex individuals consider the individual's self-perceived gender and that decisions are made with their informed consent. LGBTI individuals should be given the choice of whether they are searched by a man or woman officer.
- Develop policies on body searches of LGBTI individuals and the allocation of transgender or intersex individuals, in consultation with LGBTI detainees/prisoners and relevant expert/advocacy groups where possible.
- Review measures in place regarding the accommodation of those convicted of rape and sexual assault, as well as others deemed to be at risk of violence and retaliation by other prisoners because of their background or the types of offences committed.

#### **Police/prison administrations**

- Review measures in place to identify vulnerable groups/individuals, including those with mental-health needs.
- Use educational materials to emphasize to all incoming prisoners that SGBV will not be tolerated and provide all incoming prisoners with informational materials about SGBV and what they can do if they become a victim of abuse. Consider other strategies to raise awareness among prisoners on preventing abuse.
- Review/introduce measures to protect staff against SGBV at the hands of detainees/prisoners/other staff members.
- Introduce supervision procedures for individuals who have complained of abuse or those deemed to be at risk.
- Ensure that measures to protect detainees/prisoners from violence do not lead to discrimination, stigmatization or a reduction in access to services and programmes. Protective segregation must only be instituted with the agreement of the prisoner/

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detainee concerned and should be subject to safeguards and regular review.

- Apply safeguards regarding the separation of prisoners and appropriate staffing for all detention situations, including transfer, during training programmes and in all parts of the detention facility.

### ***ACCESS TO MEDICAL CARE***

#### **Relevant ministry staff/policy- and lawmakers**

- Review the employment status of prison healthcare staff to ensure they are employed by the public health administration and are independent from law enforcement and prison administrations.
- Ensure that all those arrested and detained have access to a doctor, if requested.

#### **Police and/or prison administrations**

- Where SGBV is detected ensure that the detainee/prisoner is informed of their right to seek recourse from judicial authorities and provide them with specialized medical assistance, psychological support and counselling.
- Make efforts to recruit specialists on detecting and dealing with incidents of SGBV, including those trained in the psychological implications of such violence and those specialized in women's and children's health. If this is not possible, ensure that all medical staff have received some training in identifying signs of SGBV and responding appropriately. Ideally, staff should be trained in applying the Istanbul Protocol.
- Ensure that all detainees/prisoners receive a medical examination on arrival conducted by a doctor or other qualified healthcare professional in full privacy. Healthcare professionals should also look for possible signs of SGBV. Women must have the option to be examined by a female doctor and the right to refuse vaginal examinations and disclosing information about their reproductive-health history.

#### **Healthcare staff**

- Healthcare staff should play an active role in, and take a multidisciplinary approach to, the prevention of SGBV.
- Medical appointments should involve a conversation with detainees/prisoners to identify signs of SGBV that are not visible and to provide detainees/prisoners with an opportunity to report abuse.
- Healthcare staff should document and report all signs of SGBV and report these to the competent authorities, with the consent of the detainee/prisoner.
- Healthcare staff should undertake data collection to help assess incidence and risk factors and to identify those who are at risk or pose a risk. Make such data available for analysis and provide reports to the central prison administration and independent bodies, providing confidentiality is ensured.

### ***STAFF SELECTION, TRAINING AND DEVELOPMENT***

#### **Relevant ministry staff/policy- and lawmakers**

- Review and revise staff training manuals to include modules on SGBV, including its definition, as well as the prevention of, and response to, incidents/complaints of abuse. Staff training should also include modules on gender sensitivity, human rights instruments and working with vulnerable groups. Consider involving specialist community groups in training sessions.
- Ensure proper screening for prospective and current employees, including background checks for history of perpetrating SGBV, and testing for personal ethics, including discriminatory attitudes towards particular groups.
- Ensure the workforce is diverse at all levels, including in senior and management posts and among policymakers.
- Ensure that those in senior management positions and members of the judiciary are trained in responding to SGBV and are committed to its prevention in all its forms.

#### **Police and/or prison administrations**

- Ensure that staff receive equal training and development opportunities, without discrimination, including training on human rights, including women's rights and gender sensitivity.
- Increase women's representation among staff by removing barriers to recruitment, advancement and retention.
- Ensure equality and reflect diversity among staff, including by increasing representation of staff with experience working with minority groups or from a minority background themselves.
- Provide ongoing training to police officers and prison officials on identifying and dealing with victims exhibiting signs of SGBV, including signs of psychological or other stress.
- Train all staff in concepts of dynamic security and encourage them to take an active interest in the welfare of detainees/prisoners and to develop positive relationships with them.

### ***ACCESS TO COMPLAINT MECHANISMS***

#### **Relevant ministries/policy- and lawmakers**

- Ensure that there are written guidelines in place detailing how a detainee/prisoner can complain and the steps to be taken when a complaint of SGBV is received. Procedures should set out timelines for response/investigation, as well as measures to be taken to protect the safety and maintain the confidentiality of the victim and any witnesses.
- Establish clear measures against prison managers or staff members who are aware of incidents of SGBV but fail to take action to prevent or respond appropri-

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ately. If such measures are already in place, review their effectiveness.

- Establish clear and immediate measures to remove prison managers or staff who are suspected of perpetrating SGBV.

### **Police and prison administrations**

- Inform all detainees/prisoners and staff about complaint mechanisms, and ensure that they can make complaints about SGBV in full confidentiality and without fear of retaliation or other negative consequences.
- Introduce systems whereby third parties can make complaints on a prisoner's behalf.
- Consider alternative methods for reporting SGBV and provide detainees/prisoners with options for who they can report to, allowing for safe disclosure. Alternative methods in addition to formal complaints should be available
- When a complaint is made, before an investigation is launched, ensure that those who are allegedly involved in SGBV are suspended from any position of power. Ensure also that they are no longer able to contact complainants, witnesses and family members, or those conducting the investigation.

## ***INSPECTIONS AND INVESTIGATIONS***

### **Relevant ministries/policy- and lawmakers**

- Review the terms and scope of internal oversight mechanisms to ensure that they include the issue of SGBV where it is safe and appropriate to do so and ensure that members of such bodies receive training on the prevention of SGBV.
- Provide internal monitoring bodies with adequate technical and financial resources and enable them to involve specialists in dealing with survivors of abuse, where possible.
- Review protocols for responding to and investigating allegations of SGBV, including accurate and confidential documentation and the protection of evidence.
- Ensure that crimes occurring in places of detention are investigated and prosecuted as they would be if they had occurred in the community.

### **Prison administrations**

- Ensure that all complaints of SGBV are investigated according to established procedures.
- Follow up on the findings and recommendations of all investigations and conduct internal reviews into the factors that led to the abuse, including the specific internal factors, in order to prevent its recurrence.
- Ensure that anyone found responsible for acts of abuse is disciplined and co-operates with judicial authorities if formal investigations are launched.

### **Legal and judicial professionals**

- Carefully consider whether serious incidents of SGBV, including rape cases, should be



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prosecuted as sexual violence or forms of torture and other ill-treatment. Such decisions should be made on a case-by-case basis and according to the wishes of the victim.

### ***SUPPORT PROGRAMMES***

#### **Prison administrations**

- Introduce in-prison support programmes on violence reduction for potential perpetrators of violence, and specialized programmes for sex offenders, in co-operation, where possible, with specialist services in the community and NGOs.
- Introduce general programmes on fostering a culture of respect in closed facilities.
- Provide all survivors of SGBV with appropriate and professional support and medical treatment, in co-operation, where possible, with specialist services in the community and NGOs. Such services should be in line with the quality of care available in the community.
- Provide gender-sensitive, comprehensive treatment and support programmes for those with mental-health needs.
- Encourage and support the development of SGBV self-help and peer-support groups in prison.
- Provide all prisoners with a range of educational, vocational and recreational activities that may effectively contribute to their rehabilitation and reintegration.

### ***AWARENESS RAISING***

#### **Relevant ministries/policy- and lawmakers**

- Support and participate in public discussions about SGBV in places of detention and the barriers to reporting/investigating abuse.
- Establish an inter-agency working group to develop strategies to raise awareness of the problem of SGBV in closed facilities.
- Co-operate with the media, civil society organizations and individuals who have an interest in publicly reporting on the issue of SGBV in detention.

#### **Prison administrations**

- Encourage staff, prisoners, family members, service providers and relevant experts to participate in anonymous surveys, as well as discussions and action groups focusing on the prevention of, and response to, SGBV in places of detention. Provide safe spaces for them to do so.
- Reach out to community organizations working with survivors to support awareness-raising initiatives.
- Allow all stakeholders to submit feedback on the effectiveness of particular approaches to preventing SGBV.

## **Annex 2. Checklist for monitoring visits on sexual and gender-based violence in places of deprivation of liberty**

### **Research and policy**

- ▶ Resources have been allocated to conduct research on SGBV in places of detention, the causes and consequences of such violence and the types of individuals most vulnerable to abuse.
- ▶ Authorities recognize that SGBV is a problem in places of detention and acknowledge that steps need to be taken to tackle the problem.
- ▶ Clear laws, policies and strategies are in place to protect detainees/prisoners, staff, service providers and visitors from SGBV.
- ▶ Those who have complained of SGBV and those deemed to be at risk are properly supervised.

### **Alternatives to prison**

- ▶ Courts consider mitigating factors, such as a history of victimization, when sentencing individuals to prison.
- ▶ Alternatives to pre-trial detention and imprisonment are used effectively, including for juveniles, pregnant/breast-feeding women, those with child-care responsibilities and those with mental disabilities.
- ▶ There is a reasonable time limit on pre-trial detention and the use of pre-trial detention is properly monitored.

### **Awareness raising**

- ▶ Upon admission, prisoners are provided with information about the facility regulations, and information about their rights including those related to SGBV in a language or format they understand.
- ▶ There are strategies in place to raise awareness among detainees/prisoners and the public on the prevention of SGBV in places of detention.
- ▶ There are NGOs/media organizations active in preventing/documenting SGBV in places of detention.

### **Dynamic security, planning and participation**

- ▶ Staff are encouraged to take an active interest in the welfare of detainees/prisoners and to develop positive relationships with them.
- ▶ Efforts have been made to engage detainees/prisoners, staff, visitors, service providers and relevant experts in discussions around the problems of SGBV in places of detention and in finding solutions.
- ▶ There has been an assessment of the prevailing culture inside prisons and attitudes towards SGBV.
- ▶ Efforts have been made to allow detainees/prisoners, staff, visitors, service providers, prisoners' associations and relevant experts to provide feedback on the effectiveness of particular approaches to prevent SGBV.
- ▶ The prevention of SGBV is taken into account in the design and planning of new prison facilities.

### **Procedural guarantees**

- ▶ Torture is a criminal offence, and this includes the prohibition of custodial rape and the threat of rape, and other forms of sexual abuse and harassment in places of detention.
- ▶ Confessions obtained under torture are not admissible in court.
- ▶ Suspects cannot be held in a facility under the control of their interrogators/investigators for more than 48 hours.
- ▶ All detention facilities can be freely and regularly accessed by monitoring bodies.
- ▶ The law requires independent investigations into all complaints of rape and sexual abuse in places of detention.
- ▶ There are penalties for the perpetrators of SGBV, including criminal justice investigations, where appropriate.

### **Arrest and police custody**

- ▶ All those arrested are informed of their rights without delay in a language or format they understand.
- ▶ They can consult with their lawyer confidentially and their lawyer can be present during interrogation.
- ▶ All those arrested can promptly notify their family of their arrest and whereabouts.

## 7. CONCLUSION

- ▶ They have the right to see a doctor of their choice.
- ▶ There is an independent police oversight mechanism.

### **Safeguards during interrogation**

- ▶ All interrogators and others present are required to identify themselves before questioning begins.
- ▶ Authorities keep proper records of all questioning sessions.
- ▶ All suspects have the right to an interpreter, if needed.
- ▶ Blindfolding and hooding are prohibited.
- ▶ Law enforcement officials are provided with appropriate training in interviewing suspects.

### **Medical screening and health care**

- ▶ Upon admission, all prisoners are medically examined by a qualified health care professional, with due regard to their gender or particular vulnerabilities.
- ▶ If health care professionals become aware of any signs of SGBV they are required to report this to authorities.
- ▶ Women have the right to refuse vaginal examinations and have the option to be examined by a female doctor or to be accompanied by a female chaperone.
- ▶ Medical consultations take place in full privacy and measures are in place to ensure medical confidentiality.
- ▶ Virginity tests are prohibited and criminalized.

### **Body searches**

- ▶ There are clear laws/policies that define when strip searches and invasive body searches can be carried out and alternative methods of screening are available.
- ▶ All body and cavity searches are carried out by qualified health-care professionals/staff in private by members of the same gender or self-perceived gender as the suspect/prisoner and there are specific guidelines for searches for all vulnerable groups.
- ▶ Authorities keep records of all searches, the identities of those who conducted the searches, the reasons for and results of the searches.

### **Separation of categories**

- ▶ Different categories of detainees/prisoners are properly separated, including men/women, minors/adults, untried/convicted prisoners and those held for civil offences/criminal offences.
- ▶ Female suspects/prisoners are attended to and supervised only by women staff members; male staff are not allowed to enter women's areas unless accompanied by a female staff member. There are special policies in place for the housing of transgender or intersex detainees/prisoners.
- ▶ Pregnant women, breastfeeding mothers and those with children are housed in accommodation that provides for their particular needs, including a space where they can breastfeed in privacy.

### **Accommodation**

- ▶ There is a proper and regular assessment of the risk levels posed by and to all detainees/prisoners.
- ▶ Special measures are in place regarding the accommodation of those convicted of rape, sexual assault and other violent crimes.
- ▶ Those sharing accommodation are carefully selected as being suitable to associate with one another.
- ▶ Authorities make every effort to ensure two detainees/prisoners do not share a cell; each individual is provided with a separate bed.
- ▶ There is regular and effective night-time supervision of all cells and dormitories.

### **Contact with the outside world**

- ▶ All detainees/prisoners can meet and communicate with their legal adviser in full confidentiality.
- ▶ All detainees/prisoners can inform their family/contact person about their imprisonment without delay and can communicate with family and friends regularly.
- ▶ Foreign nationals can communicate with their diplomatic and consular representatives.
- ▶ Efforts are made to keep prisoners, especially female prisoners, as close to their homes as possible.
- ▶ Conjugal visits are allowed for both male and female prisoners and can take place in safety and privacy.

### **Day to day prison life and institutional culture**

- ▶ All areas of the prison and all prisoner activities are properly supervised by prison staff.
- ▶ Detainees/prisoners do not have to shower in public, and women do not have to shower/use the toilet in front of male staff and vice versa.
- ▶ Measures are in place to prevent gang violence, prison corruption and informal systems of barter.
- ▶ Staff are strictly forbidden from drinking alcohol and taking drugs while on duty.

### **Conditions of transfer**

- ▶ Safeguards are in place to ensure the safety and security of detainees/prisoners during transfer; transfers are only carried out under the direction of public authorities.
- ▶ Men and women are kept separate during transfer and women/girls are supervised only by women staff.
- ▶ Detainees/prisoners can immediately inform their lawyer, family/contact person of their transfer to another institution.
- ▶ Medical and personal files are also transferred.

### **Restrictions, discipline and sanctions**

- ▶ As a general rule, restrictions, discipline and sanctions are imposed on an exceptional basis, and once other measures have failed. Disciplinary sanctions are authorized by law or the regulation of the competent administrative authority, including the use of any form of involuntary separation from the general prison population, such as solitary confinement.
- ▶ Safeguards are in place to ensure that the use of restrictions, discipline and sanctions do not increase the risk of exposure to SGBV. Also in order to mitigate the risk of SGBV, disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.
- ▶ Given the risk of SGBV while in isolation, the minimum standards and safeguards for the imposition of such measures, as prescribed in the Nelson Mandela Rules, are implemented (Rules 38, 44 and 45).

### **Staff recruitment and training**

- ▶ There is a commitment to non-discrimination and diversity in the recruitment, training and treatment of staff.
- ▶ Criteria are in place to hire only suitable candidates who display knowledge and sensitivity to, among other things, gender issues, and an adequate standard of education.
- ▶ All staff receive relevant training, including on gender issues and SGBV, before entering active duty and there is effective staff supervision.
- ▶ There is an adequate ratio of staff to prisoners, including a balanced gender ratio of staff.
- ▶ Staff salaries, benefits and conditions of service are adequate to attract and retain suitable staff.

### **Complaints mechanisms**

- ▶ Prisoners/prisoners are provided with information about how to make complaints in a language/format they understand.
- ▶ Detainees/prisoners (or their representatives) and staff can make complaints in full confidentiality, without censorship and without fear of retaliation, intimidation or other negative consequences.
- ▶ Staff are required to report any suspicion of SGBV.
- ▶ Complaints are dealt with promptly, safely and in full confidentiality.
- ▶ Those tasked with investigating complaints have access to sufficient technical and financial resources.
- ▶ Complaints are recorded in the prisoner's file, providing this will not pose a danger to the complainant; Inspectors have full access to these files.

### **Responding to allegations of violence**

- ▶ There is a requirement that all complaints of SGBV are reported and investigated in line with agreed protocols.
- ▶ Complainants are provided with immediate access to independent and confidential health care by properly trained medical professionals.
- ▶ All visible injuries are recorded in the prisoner's file.
- ▶ Authorities assess the factors that led to the abuse and follow up to prevent recurrence.

## 7. CONCLUSION

- ▶ Victims of SGBV are provided with prompt and fair redress for the harm they have suffered.

### **Counselling and support**

- ▶ Victims of SGBV are provided with appropriate, specialized psychological support/ counselling.
- ▶ Anger management programs and other initiatives are available to perpetrators of abuse and other prisoners.
- ▶ Drug and alcohol treatment programs are available to prisoners on a voluntary basis.
- ▶ Those with mental health needs receive appropriate, individualized counselling, psycho-social support and medication.

### **Investigations and prosecutions**

- ▶ Those subjected to SGBV are informed of their right to take legal action and the procedures and steps involved in a language or format they understand.
- ▶ They are provided with free legal assistance.
- ▶ They have the right to confidentiality throughout the investigation.
- ▶ Those accused of violence are removed from any position of control or power.

### **Inspections and monitoring**

- ▶ OPCAT has been ratified and there is a fully independent National Preventative Mechanism (NPM).
- ▶ There are other independent mechanisms, including NGOs that monitor places of detention.
- ▶ Monitors have adequate technical and financial resources to carry out their work effectively.
- ▶ Monitors can freely choose which detention facility/ prison to visit, which detainees/prisoners to interview, make unannounced visits and conduct private and fully confidential interviews.
- ▶ Monitoring bodies include women members and other specialists, and female monitors are always present during inspections of detention facilities for women.



### **Annex 3. ODIHR Questionnaire to OSCE participating States on Addressing and Preventing Sexual and Gender-based Violence<sup>355</sup> in places of deprivation of liberty<sup>356</sup>**

1. Please share any available data on the prevalence of the problem of sexual and gender-based violence in places of deprivation of liberty. If possible, please ensure that data are disaggregated by sex, age and place of detention.
2. Has your country addressed the issue of sexual and gender-based violence in places of deprivation of liberty at legislative, policy, internal regulations and/or other level? If so, please specify the type of intervention, when it was adopted and the outcome.
3. What measures are in place for custodial and correctional settings to prevent sexual and gender-based violence perpetrated by both personnel and prisoners or detainees? Please briefly describe.
4. How are particularly vulnerable groups (women/girls, minors, young adults, persons with disabilities, first time offenders, etc.) protected from violence in places of deprivation of liberty?
5. What kind of mechanisms are in place to assess the vulnerability of a detainee or of a convict to being subjected to violence?
6. Is handling and prevention of sexual and gender-based violence part of curricula/training for personnel working in places of deprivation of liberty? If so, please specify briefly.
7. What mechanisms and protection systems are available for individuals deprived of their liberty to present a complaint of sexual and gender-based violence or for others to report about it?
8. What kind of accountability mechanisms and protection systems for victims and witnesses are in place for identifying, documenting, investigating and prosecuting perpetrators when it comes to incidents of sexual and gender-based violence in places of deprivation of liberty? What kind of measures (judicial, non-judicial remedies) have been undertaken, thus far, to address any such incidents? What was their outcome?
9. Has there been any evaluation of the effectiveness of existing programmes or policies to address sexual and gender-based violence in places of deprivation of liberty?

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355 For the purpose of this questionnaire, the term *sexual and gender-based violence* (SGBV) refers to a wide variety of abuses, including rape and attempted rape, sexual threats, exploitation, humiliation, assault, molestation, involuntary prostitution (sexual bartering), torture, unwanted or noxious insertion of objects into genital openings, forced pregnancy, forced sterilization, forced abortion, forced prostitution, trafficking, sexual enslavement, forced circumcision, castration and forced nudity. Sexual violence is a form of gender-based violence and encompasses any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or is otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.

356 *Places of deprivation of liberty in the criminal justice system*: police custody and temporary detention facilities, pre-trial detention facilities (remand), men's and women's prisons, juvenile detention facilities.

Sexual and gender-based violence is a persistent problem in places of deprivation of liberty across the OSCE region. This reflects not only the extent to which society tolerates such violence, but also the fact that prisons and detention facilities often fail in their duty to protect detainees and prisoners. This publication provides examples from around the OSCE region that show how states can address and prevent sexual and gender-based violence in places of deprivation of liberty, while upholding human rights and integrating a gender perspective. It aims to raise awareness about sexual and gender-based violence in criminal justice facilities and about victims' needs, while proposing a range of safeguards that can be put in place to effectively prevent such violence.

