

Stop prison rape in South Africa

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abstract

South Africa has some of the highest rates of rape in the world. Activists have drawn attention to the devastating effect this has on women and children. However, insufficient attention has been paid to rape - predominantly of men - in prisons. This article aims to educate gender activists about the phenomenon of prison rape in the context of South Africa. It hopes to make the case that prison rape reflects and reinforces rape culture in South Africa (and elsewhere). In so doing, it aims to galvanise action to prevent prison rape and all forms of rape.

keywords

prison rape, human rights, masculinity, health, violence against women

'No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens but its lowest ones.' Nelson Mandela, *A Long Walk to Freedom*.

South Africa has some of the highest rates of rape in the world. Activists have appropriately drawn attention to the devastating effect this has on women and children and have made explicit the links between sexual violence, a culture of male entitlement to women's bodies and high rates of HIV infection and the limited effect of HIV prevention. However, insufficient sustained attention has been paid to rape – predominantly of men – in prisons.

Rape in prisons elicits little concern in most societies – South Africa included. Instead, rape

in prisons is often joked about as though it is a predictable part of the sentence, the spectre of which might serve as a useful deterrent against criminal behaviour.

While some anti-rape activists have begun to meet the needs of prison rape survivors, in general organisations working to end sexual violence in South Africa have focused on responding to endemic violence against women and children.

We argue here that there are a number of reasons why gender, HIV/AIDS and human rights activists should pay attention to prison rape. Firstly, the continued existence of prison rape constitutes a gross human rights violation. Secondly, prison rape represents a threat to our attempts to build and entrench a human rights culture. Thirdly, the phenomenon of prison rape provides useful

insights into gender theory and constructions of masculinity. Fourth, prison rape contributes to a range of public health problems. Fifth, prison rape contributes to violence against women.

This *article* aims to educate gender activists about the phenomenon of prison rape in the context of South Africa. We hope to make the case that prison rape reflects and reinforces rape culture in South Africa (and elsewhere). In so doing, we aim to galvanise action to prevent prison rape and all forms of rape.

Research methods

The authors used four forms of data collection. Firstly, we conducted a desk review of reports and official documents published on prison conditions in South Africa and a broad review of literature pertaining to sexual violence in South African prisons.

Secondly, we reviewed interviews with inmates, Department of Correctional Services (DCS) officials, health officials and independent prison visitors conducted by Elena Ghanotakis in 2004 and 2005 to understand their perspectives on rape in prisons. All interviewees signed consent forms in which they released the information they shared to be used for purposes of raising awareness. Thirdly, using a snowball methodology, we interviewed researchers and activists working in prisons or on prison reform in South Africa. Consent forms and information about the study were handed out and signed by interviewees.

Background

Prisoners form one of society's most marginalised groups. Perhaps contrary to common belief, prisoners retain all rights except those curtailed to implement the imposed sentence. South African jurisprudence has supported this view on numerous occasions (Berg, 2007). The state thus has a duty to care for prisoners in a manner that does not violate their rights. The practice and threat of being raped



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Prison rape is a gross violation of human rights.

in prison impinges on these rights.

The South African Constitution of 1996 includes a modern set of rights in its chapter 2, the Bill of Rights which states that:

‘Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.’ (Constitution, 2006).

It also states that ‘Everyone has the right to bodily and psychological integrity’, which includes the right to security in and control over their body.

In addition to the South African Constitution, a

range of international conventions ratified by South Africa protect the rights of prisoners, including: the Convention against Torture (CAT, ratified by South Africa in 1998); the International Covenant on Civil and Political Rights (ICCPR, ratified in 1998); the African Charter on Human and Peoples Rights (the Banjul Charter, ratified in 1996) and, for prisoners under 18, the Convention on the Rights of the Child (ratified in 1995).

Despite clear constitutional requirements that the state has a duty to protect inmates from violence and provide humane prisons conditions in South African prisons over the last decade have worsened largely due to chronic overcrowding.

South Africa has the largest number of inmates of any African nation and the ninth largest prison population in the world

In line with trends in countries with punitive sentencing regimes such as the United States, the post-1994 period saw a rapid increase in South Africa’s prison population, particularly amongst the sentenced population. A large proportion (currently 30 percent) of ‘awaiting trial’ or ‘unsentenced’ inmates remains cause for concern. In 1995, South African prisons held 111 090 prisoners. Within nine years that number increased to 186 468 giving South Africa the dubious distinction of having the largest number of inmates of any African nation and the ninth largest prison population in the world (Sloth-Nielsen, 2007).

While the total prison population is now somewhat reduced to 159 713 (April 2007), largely due to special remissions of sentence, this still represents 41 percent more prisoners than the actual capacity of South African prisons (114 549). This growth in the prison population has led to chronic overcrowding, which is exacerbated by varying levels of overcrowding among prisons – some prisons are vastly more overcrowded than others – the worst are occupied in excess of triple capacity.

As a result, conditions in many prisons frequently fail to meet the minimum standards established in national and international legislation and declarations and represent serious breaches of rights enshrined in the South African Constitution. The Report of the Office of the Inspecting Judge provides a clear picture of the conditions faced by some inmates: ‘Examples in recent reports are: medium and maximum prisoners being mixed; 44 beds for 100 inmates; about 74 inmates in cells for 16...; sharing of beds’ (Judicial Inspectorate of Prisons 2006).

These conditions and a litany of scandals emanating from Correctional Services in the late 1990s and early 2000s drew significant public attention to the dismal state of South Africa’s prisons. To address this, the South African Government appointed the Jali Commission of Inquiry in 2001¹ to investigate prison conditions and to issue recommendations for improving the state of South Africa’s prisons. As part of its mandate, the Jali Commission was tasked with examining sexual violence in South African prisons and recommending strategies to prevent it².

During the Jali Commission the South African public heard many chilling stories of pervasive prison rape – including stories of some inmates deliberately raping others to infect them with HIV – a practice reportedly known as a ‘slow puncture’ (Reuters, 2001). Chapter 8 of the Jali Commission presents evidence that rape is rampant in prison, in which the Commission expresses its concern:

‘... if the Department [of Correctional Services] keeps on ignoring the fact that sexual abuse is rife in our Prisons and that there is an extreme likelihood that prisoners who are exposed to violent unprotected sex will in all likelihood contract AIDS, then it is effectively, by omission, imposing a death sentence on vulnerable prisoners (Jali Commission, Chapter 8, page 43).

Given the limited public attention prison rape has received since the Jali Commission hearings, this article examines the period 2001 to the present and attempts to identify what has been done by government and civil society organisations to address prison rape since the Jali Commission was appointed.

Findings

The Jali Commission was appointed in August 2001 to investigate and report on corruption, maladministration, violence and intimidation by the Department of Correctional Services and handed in its final report on December 2005. It was presented to the public in November 2006. This substantial report devotes a chapter to Sexual Violence and seems to set out an honest and well-informed description of the pervasiveness of the problem in South Africa's prisons. The Commission does not hide its deep concerns when it speaks about:

'the horrific scourge of sexual violence that plagues our Prisons where appalling abuses and acts of sexual perversion are perpetrated on helpless and unprotected prisoners' (Jali Commission, 2005).

The Jali Commission has also addressed the existence of gangs in prisons and the ongoing overcrowding in South Africa's prison system. These phenomena clearly perpetuate and exacerbate the problem of rape in prison. The report generally describes a culture of lawlessness in the prisons. The effect of this on the prevalence of rape is obvious.

The DCS staff and inmates interviewed for this article corroborated the findings of the Jali Commission and were critical of the Department's attempts to address the problem of prison rape. From the interviews the following description of the reality in the prisons was deducted:

Sexual violence is rampant in South African prisons

Testimonies of inmates in South African prisons suggest that sexual violence continues to be rampant:

'There is a lot of rape going on in prison'

A South African prison warden describes how quickly someone can get raped once they enter the prison system:

'There is one communal cell, which is a court cell. Everybody going to court tomorrow will sleep in that cell. And during that sleepover, you know, "things" happen there. So he arrives there in court as the perpetrator in any case, but he arrives there being the victim of male rape in prison last night. So he has been branded as the perpetrator coming to prison, but he can arrive at court or at home as the victim because of what happened to him in prison.'

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An inmate discusses what happens when people first come to prison and how this experience can change a person's life:

'A person comes to prison, he doesn't have a clue really what prison is about. He's being exposed to people that are in prison for rape, murder, you name it. At the end of the day he comes out with a court sentence and with the new system in place, the court sentences you to seven days, where after seven days, you have to go to court arraignment. What happens in those seven days, it changes a person's life. Prisoners get in the court cells. There is a possibility to be raped. And he

comes to prison and in those seven days, he is exposed to so many criminal activities. When he gets out, he probably doesn't have a job anymore. So there's only one way out. He's going to put the things he learned to test now. And that person gets out and rapes innocent people, you know babies, because for him it's normal, he's been raped in prison.'

Intimidation and violence surrounding sexual violence persist

Testimonies of inmates in South African prisons suggest that intimidation and violence continue to be associated with rape.

One key informant working in the prison alluded to the intimidation that occurs in the prisons:

'The cases are withdrawn because of intimidation by the gangs. Most of the rapes are committed by the gangs. They are sometimes committed individually – an individual perpetrator, sometimes two or three together, but there is always threat and intimidation and often beating that goes on around that rape. People don't just give in straight away. This is a very unpleasant thing. Nobody wants to be raped. And they put up often quite a fight, but they are intimidated or they are threatened before the rape and then of course after the rape. They are not allowed to tell because they will be killed or they are not allowed to tell because this will happen. They have already been beaten, they have already been raped. Many of them then decide it is not worth telling.'

'If the gangs find out (that you report rape) they will stand up they will stab you with knives or they will kill you if they get chance to kill you.'

'If they just say you must do that, you must

do it because you are afraid something will happen... you will get hurt or you can get killed. So, if someone wants to abuse you sexually, you must just go with it... no matter if you doesn't agree or what... they will do it with force upon you.'

As a result, few victims do report prison rape, which obstructs the collection of evidence on the extent of prison rape. The recent former Judicial Inspectorate of Prisons provided insight into issues surrounding the reporting of prison rape cases:

'The criminal trials resulting from prison rape, is very little from my own experience. The few that you have is negligible – that means they barely go to trial. What we often find at the inspectorate is that the person would have lodged a complaint and then withdraw the complaint or come forward and say "We've solved it". But we also know that it being linked to gangster activity in prisons, there is a lot of pressure on that victim coming forward and going through with the charges.'

Although very few statistics are available on prison rape and reporting to authorities, a study done by the Centre for the Study of Violence and Reconciliation in Boksburg Youth Centre revealed that 58 percent of recent assaults were *not* reported by the victim (Gear & Isserov, 2006).

A doctor at a trauma hospital in the Western Cape gave an account of a rape survivor he treated, which provides insight into the challenges in collecting proper evidence of rape in the prison context:

'It was after he was released and he spent time at hospital for psychiatric observation that he actually spoke about it and the caretakers of the hospital brought him where I saw the patient. Now the fact that the rape had

happened for a few weeks in prison and over two weeks ago, there was nothing I could do to collect medical evidence other than noting that his perineum was bruised and had scars of violation.'

Male rape is not recognised as such in South Africa and there is no data on prison rape

An attorney for the National Prosecuting Authority explained the problem that male rape is not recognised as such in South Africa:

'I must admit that I have only ever dealt with the male on male rapes (in prison), which as you know in the law at this stage is not really recognised as such yet.'

Key informants indicated that there are no official statistics on rape, and that there are no specific programmes that address rape in prison. As one informant said: 'We sit still in a journey, while anything happens.' One informant calculated a sexual assault rate of 'at least 50 percent'.

The Sexual Offences Bill, which extends the definition of rape, could have a positive effect on the perception of male rape and the collection of data.

There are major staffing issues, including shortages and corruption, which exacerbate the situation in relation to prison rape

'We are supposed to have a clinical psychologist on the rotation. I haven't even met that person so I don't know if that person sees any of my prisoners.'

An inmate describes overcrowding and staff shortages:

'There's almost no place for the people because we are sleeping in rooms that they accommodated for 24 people and we are 40-50



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people. So that is the thing that is concerning by the wardens also that is working on the sex and what to do they don't know because every day they come with new inmates, every day there is new inmates, so they must accommodate the people.'

As determinants of overcrowding key informants brought up the lack of places of safety for young offenders, forcing them into the prisons, where they are a vulnerable group when it comes to sexual violence. Informants are especially worried about the combination of the overcrowded cells and the early lockup of inmates (after which the wardens are literally invisible to inmates and *vice versa*). Even though constructive

programmes have been offered throughout the morning and early afternoon, the early lockup in the overcrowded cells means that 'everything constructive that has been done during the day can be undone after that'.

One key informant described how prison staff facilitate an environment for sexual abuse to flourish:

'They (wardens) are supposed to control things in the prison have themselves become something of a gang because they collude with the gangs, they allow things to happen. They don't necessarily intervene when things go wrong. They may very well look one way when something happens.'

A health care worker in a South African prison identifies the problem of sexual violence and staff shortages:

'There is a lot of abuse going on in the prison, which is not necessarily sexual, but it is certainly leading to breakdown of health. And where it is sexual, it leads to very serious consequences for the health of the prisoners. They are very demoralised by that act and working with them it is difficult because, as I said, there isn't much back-up service.'

Sexually transmitted diseases such as HIV are brought into the prison, having a devastating effect when inmates are subjected to (forced) sexual activity

One of our key informants pointed out that the DCS has quite a substantial budget and claimed that that there is 'one DCS official for every four inmates'. This informant did not see the problem in staff shortages but in inadequate training and the fact that people 'simply do not do their job'.

Data from the DCS however shows that as at January 10, 2006, the DCS had 35 143 staff positions filled (including management and

professionals) with 3 927 posts vacant – and only 30 809 of 33 074 correctional official posts are filled, so that the national average ratio of correctional officials to prisoners is in the region of almost 6:1, and much higher in overcrowded facilities (Department of Correctional Services, 2007). Shift work would also imply an even higher ratio in practice. Inadequate training is indeed likely to exacerbate the impact of staff shortages.

Insufficient healthcare in prisons

Our key informants confirm the lack of professional caregivers. In one prison for instance one would find 'one psychologist for 7 000 inmates'. Indeed, data from the DCS shows a high vacancy rate among professional staff, with 2 203 posts filled but 1 119 vacant (DCS, 2007).

The lack of health care workers means that screening upon admission is not done (properly) and sexually transmitted diseases such as HIV are brought into the prison, having a devastating effect when inmates are subjected to (forced) sexual activity or even consensual sexual activity. On the absence of an adequate system of psychological counseling an informant says: 'No one should go through that without the proper counseling and healthcare.'

The Sexual Offences Bill does not seek to provide victims of rape with psychosocial counseling at state expense³. However, the bill in its current form does seek to provide for post-exposure prophylaxis where the victim reports the rape within 72 hours.

Lack of Training

Our interviews indicate a substantial need for training on rape and HIV transmission, amongst other issues. One DCS healthcare worker in South Africa offered what this person called a 'maverick' interpretation of the risk of HIV transmission:

'Sexual activity is not the same as rape. Rape is traumatic and against the will of a person

concerned. I think there is something else going on here in relation to the trauma. With sodomy there is very little injury that occurs with the sodomy cases that we see in prison. But there is very little open wound injury in rape within the prison. So I think that might be an extra reason why. And the third reason is probably because the anal passage itself is not only large in proportion to the ejaculation but it is also covered with bacteria, which would make it hard for the virus to get through to the internal organs, the blood system.'

This view, held by a DCS health care worker, is of great concern, since (unprotected) anal intercourse has been identified as carrying the highest probability of transmission of all types of sexually transmitted diseases (World Bank, 1997).

Gendered nature of rape in prison

In their description of the circumstances in which rapes occur, inmates and key informants pointed out the gendered construct of perpetrators and victims and revealed how rape in prison reflects and reinforces men's understanding of sex as an expression of male dominance and men's sense of entitlement to women's bodies or to bodies positioned as female.

'It didn't feel better the second time, it was still sore. They male raped me. I think that they think I am a woman. But I'm not a woman, I'm a man. Because I was sodomised, I'm more streetwise now. So I sodomise. I enjoy sodomising because it is now time to sodomise and get rid of my anger.'

'If you come inside prison and you don't know prison, and they will get you and call you at night, maybe you sleep and they wake you up and call you and they will talk to you and the talk that opens is always to abuse you, have sex with you, and if you don't agree with

it they will use force on you to achieve the things that they want to do to you to abuse you like they use you like you are a lady.'

A key informant who has counseled prison rape survivors revealed how inmates frame their rape experiences:

'I will say things like, "When you're raped, you feel as if you have been turned into a woman. Is that what you feel?" And then I try and get them to respond. Or "you will feel as if you have been turned from a man into a woman?" Cause this is the way they complain about it and at the same time this is the intention of the rapist; to turn them into a passive sex slave.'

Lack of rehabilitation in prison

An inmate describes the lack of rehabilitation structures in prison:

'The court sentenced me with the objective to be rehabilitated in prison. But they don't rehabilitate anyone in prison, I had to rehabilitate myself. Where do the wardens come from? Are there structures in place for him to change in order to change me? It's not there. So at the end of the day we've got rape, HIV, crime... these are some of the things that exist in this country. Cause why? Because nobody gets involved. That's what it is like.'

Rape in prison reflects and reinforces men's understanding of sex as an expression of male dominance

A warden speaks about the essential need for rehabilitation:

'If you punish and keep on doing that with an overpopulated prison, send them back to society, what is going back to society?

Monsters. We are making monsters and the same people that are here today in prison are tomorrow what we are putting out on the streets. We need to correct. We need to restore.'

Implications for the community

Evidence provided by key informants shows that rape in prison might very well be the beginning of a spiral of sexual violence that continues in the community upon release; it has been stressed that this is particularly true of young prisoners (Parliamentary Portfolio Committee on Sexual Violence, 2005).

A psychologist who has developed and implemented sex offender rehabilitation programmes at correctional facilities in South Africa states that:

'When men are victimised and traumatised, they carry on victimising others at different levels and in different ways. If a man gets brutalised in prison, he comes out and his first target is his family, his wife and children. Unfortunately, sexual violence is a gift *that keeps on giving and the family is often the first target upon release.*'

'Get a person in prison and he is raped in prison. That person goes out and rapes innocent people... because for him it's normal'

One inmate describes how he rapes to pay back for what has happened to him:

'I can say it makes me feel like paying back for what happened to me, it even makes me feel good inside. I want them to feel what I felt, at that time when it happened to me.'

'Get a person in prison and he is raped in prison. That person goes out and rapes

innocent people... because for him it's normal; he has been raped in prison. And for him it feels like, he's retaining his manhood.'

Another inmate talks about the cycle of abuse and how sexual violence in prison carries into the communities:

'Since I came here to prison, things happen; they infect us and leads you to the point where, for a man to be abused, it is like your manhood is taken away from you. At the end of the day, you feel justified by raping the next person, whether it is a male or female. It feels like retaining your manhood.'

Discussion

Interviews with inmates and a host of reports suggest that rape is pervasive in South African prisons. However, the response from the DCS to date has been wholly inadequate. No official statistics on rape within prison are available. No rape-specific prevention programmes are currently offered at prisons, and psycho-social support and medical treatment is chronically unavailable – reflecting dire shortages of health workers, especially critically needed social workers and psychologists. The response from the state (and, sadly, from most civil society organisations) suggests that preventing prison rape is not a priority at all.

While our still new democratic government is faced with many pressing social problems, we argue that prison rape should be addressed urgently for at least the following reasons:

Prison rape represents a gross human rights violation and a dereliction of the State's constitutional duty to protect

Perhaps contrary to common belief, prisoners retain all rights except those which have to be limited to implement the imposed sentence. South Africa's Constitution guarantees rights to

all citizens, including those who have committed or been accused of crime and are incarcerated. In fact, because prisoners are incarcerated by the state, the state has an especially clear duty to care for prisoners in a way that does not violate their constitutional rights, which include the rights to humane conditions of incarceration, dignity, life, and freedom and security of the person.

The continued existence of prison rape constitutes a threat to our human rights culture

Sacrificing the rights of inmates sets dangerous precedents for a new democracy such as ours. When we sacrifice victims of prison rape – whether it be with arguments of expediency, such as those made about costs and limited resources or the pressing priorities of other groups – we run the risk of seeing our social contract with other groups gradually eroded and undermined, first marginalised groups, such as migrants and refugees (who are already often blamed for crime and unemployment) and then quite possibly other groups such as people living with HIV and AIDS (witness calls for mandatory HIV testing), sex workers or perhaps survivors of rape in general.

Prison rape sheds light on how masculinities are constructed and makes clear the damage done to men and women by hegemonic masculinity

The publication in 1995 of Connell's *Masculinities* contributed to an understanding that men are not monolithic. Instead, Connell argued that men's experiences, understandings and embodiments of what it means to be a man are shaped by and reflect their life experiences (Connell, 1995). The quotes in this *article* make it clear that prisons foster particular forms of masculinities. In his book *The Number* Jonny Steinberg chronicles the ways in which South African prisons manufacture especially violent, predatory forms of masculinities that reflect and reinforce a history of violent masculinities (Steinberg, 2005).

Rob Morrell, editor of two anthologies on men in South Africa and the region, argues that 'masculinity and violence have been yoked together in South African history' (O' Donovan and Redpath, 2006). Discussions of interpersonal violence appropriately centre on men's violence against women; after all South Africa has some of the highest levels of domestic and sexual violence anywhere in the world. However, men's violence against men should also generate significant alarm. In 2003, roughly seven times as many South African men as women died as a result of homicide. Based on the National Injury Mortality Surveillance System, in 2003, 7 359 men died as a result of homicide, while 1 197 women were killed (NIMSS, 2004). While not usually defined as such, we posit that this, too, constitutes a form of gender-based violence; much of the violence carried out by men against other men serves as a way to assert male dominance. This is especially true in prisons.

South African prisons manufacture violent forms of masculinities

Kopano Ratele argues that a first step in dealing with our violent past and present entails acknowledging 'the longstanding violence of our society, our own vile history' (Ratele, 2003). Admitting the impact that it had and continues to have, he says, allows us to admit 'that we are talking about men who are not mad, but are rather the embodiment of a mad society'. He poses a question first asked by Eric Miyeni that organisations working with men need to attend to urgently. Describing his friends traumatised by apartheid, Ratele quotes Miyeni, 'I hear people say these men belong to the lost generation. And so I ask, "Where is the search party?"'

Surely the 'search party' Miyeni calls for would find many men of the 'lost generation' in prison. His question requires that we question our shift towards more punitive 'lock 'em up and throw

away the key' responses to crime and that we instead explore ways to address the social causes of crime and provide inmates with effective rehabilitative options.

Prison rape compromises public health and increases levels of violence – especially violence against women

Challenging prison rape, insisting on humane prison conditions and holding the state to its commitment to provide rehabilitation programmes and effective alternatives to incarceration is also good public health and crime prevention. After all, inmates leave prisons and return to their communities. When inmates contract HIV or TB, develop AIDS-related opportunistic infections and receive inadequate medical treatment they are more likely to contribute to a range of health problems.

Inmates who come into prison for crimes that are not in any way related to sexual violence are desensitised in prison as a result of sexual assault

Simultaneously, when inmates experience the trauma of rape and suffer ongoing humiliation and degradation, or are forced to join gangs for safety and survival, they are more likely to contribute to a range of health problems and are more likely to engage in criminal activities – including, we contend, violence against women and children. What's more, inmates who come into prison for crimes that are not in any way related to sexual violence are desensitised in prison as a result of sexual assault and may themselves become perpetrators of the violent and aggressive crime of rape. Given the ways in which prison rape exacerbates a more generalised culture of male entitlement to women's bodies, and given the expertise of anti-rape organisations, it is important that organisations focused on rape – including women's rights organisations – engage in advocacy to prevent prison rape.

Gender analysis and beyond

A gender analysis provides useful insights into how masculinities are constructed and enacted both within and outside of prison. A gender analysis helps us understand that rape in prison reflects, reinforces and valorises predatory forms of masculinity. However, gender is only one determinant of prison rape.

A range of broader structural forces such as race, class and economics determine who ends up in prison, what conditions they face there and what recourse to justice they have. It seems futile, for instance, to offer inmates workshops on gender and alternatives to violence without simultaneously advocating for immediate solutions to the chronic overcrowding that contributes to rape in prison. In other words, gender theory is useful but should be part of a broader framework when developing effective responses to prison rape.

Recommendations

Address overcrowding

Overcrowding is not only a key correlate of rape in prisons, but also impedes the upholding of rights and maintenance of standards in prisons. A comprehensive overhaul of sentencing in general is required, not least because there is evidence to suggest current sentencing practices may be skewed against young Coloured and black men. Such a sentencing overhaul should provide for real alternatives to imprisonment for less serious offences, as well as a sensible framework of imprisonment for serious offences, taking into account the capacity of prisons.

The Correctional Services Amendment Bill seeks to give the Minister wide discretion to grant parole and thus shorten the sentences handed down by courts, as a solution for overcrowding. This is likely to undermine both the rule of law and public trust in the criminal justice system. Sentencing reform in the courts should be preferred over a wide discretion to grant parole in the hands of Correctional Services. Such reform

should include expansion in the availability of alternative programmes provided or funded by the Department of Social Development, which may form part of sentences for non-custodial sentences of correctional supervision.

Implement the Jali Commission recommendations

The Department of Correctional Services should seek to implement the Jali Commission Recommendations. This process should be accompanied by an operational plan and indicators for each recommendation so that proper monitoring and evaluation can take place. An independent, external body should conduct assessments of the situation initially to ensure implementation. Through monitoring, the impact of various interventions can be measured. The performance of the system in integrating these recommendations should be enforceable at every level, including the Minister of Correctional Services and the Department should be held responsible if the recommendations are not implemented with urgency.

Strengthen civilian oversight

The Judicial Inspectorate should be strengthened instead of weakened as is currently proposed by the Correctional Services Amendment Bill. In addition the Judicial Inspectorate should collaborate with departments beyond the DCS to ensure that prison rape is addressed, including the Department of Health, the South African Police and the National Prosecuting Authority.

Civil society co-operation

Women's rights organisations, HIV/AIDS advocacy organisations, organisations working with men to promote gender equality and organisations working to promote prisoners' rights should develop working coalitions and networks to demand services for rape victims, including prison rape. There is a need for greater CSO involvement in holding the DCS accountable.

Notes

- 1 The Commission of Inquiry to investigate and report on corruption, maladministration, violence, and intimidation in the Department of Correctional Services (DCS) became known as the 'Jali Commission' after Mr. Justice T.S.B. Jali, serving as the Chairperson of the Commission.
- 2 Although the law does not yet consider forced anal penetration of men to be "rape", the Sexual Offences Bill, which has been approved by the National Assembly and is awaiting approval by the National Council of Provinces, seeks to change the legal definition of rape so that any form of non-consensual penetration of the vagina, anus or mouth constitutes "rape" rather than sexual assault. In this article we use the term "rape" as it is defined in the Sexual Offences Bill.
- 3 For an outline of the Sexual Offences Bill: M. Bruins, Taking stock of the Sexual Offences Bill.

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