

Women in Prison: South Africa

Analysis from the National Preventive Mechanism

| August 2024



South Africa



UNCAT Ratification

10 December 1998

OPCAT Ratification

20 June 2019

National Preventive Mechanism (NPM)

South African National Preventive Mechanism (SA NPM)

NPM legal framework

OPCAT referral to Parliament for ratification by Cabinet (28 February 2019); approval of OPCAT ratification and NPM model by the National Assembly (19 March 2019) and the National Council of Provinces (28 March 2019)

NPM operationalisation

Since July 2019

NPM structure

Cooperative model consisting of several constitutional and legislative institutions. It is coordinated by the South African Human Rights Commission (SAHRC). The SAHRC also retains a residual monitoring function with four constituent member institutions: Judicial Inspectorate for Correctional Services (JICS); Independent Police Investigative Directorate (IPID); Office of the Military Ombud (OMO); Office of the Health Ombud (OHO).

NPM composition

NPM Secretariat within the SAHRC: 4 staff (2 women)

I. Facts and Figures¹

Prison population	Women in prison - Characteristics	Prisons for women	Prison staff
Total prison population	Women with children in prison ²	Total number of women's prisons ³	Prison staff (total)
157,056	52	25	38,135
Women in prison (total)		Women-only prison	Women prison staff
4,649 2.96%		9	38.7%
Women on remand		Mixed prisons with special unit for women	
1,958		16	
Sentenced women			
2,691			

¹ Department of Correctional Services, 2022/2023 Annual Report, 30 March 2023: <http://www.dcs.gov.za/wp-content/uploads/2016/08/DCS-Annual-Report-Ready-for-Tabling.pdf>

² According to the Correctional Services Act 111 of 1998 (Section 20), a female inmate may be permitted, subject to such conditions as may be prescribed by regulation, to have her child with her until such child is two years of age or until such time that the child can be appropriately placed taking into consideration the best interest of the child. In accordance with this section, mothers must be kept in separate sections with their babies. This can be in a separate unit within the correctional centre or within a separate house on the correctional centre premises. In addition, children are provided with a separate cot bed as well as toys and a play area.

³ On 12 December 2022, the Department of Correctional Services launched the first Gender Responsive Centre for incarcerated women in South Africa. The Centre is designed to respond to the specific needs of incarcerated women.

II. Recommendations

Accommodation and food

- + Increase the quantity of the food provided and ensure that food is served at appropriate times in line with the court order in *Participative Management Committee v Minister of Justice and Correctional Services and Others*, case number 17/16317.

Sanitary facilities and personal hygiene

- + Build a borehole on the grounds of the respective correctional centres and install functional thermostats to ensure access to warm and hot water for women detainees.
- + Provide good sanitary towels to women detainees and provide a pack at a time.

Access to healthcare

- + Provide gender specific health care to women detainees, including the relevant gynaecological care as prescribed in terms of age.

III. Detention Issues

Body searches

a) Legal and regulatory framework

Women, just like men, are subjected to body searches in correctional centres. Section 27 of the Correctional Services Act⁴ states that “the person of a prisoner may be searched by manual search or by technical means”. If there are reasonable grounds, individuals may also undergo searches involving visual inspection, physical probing of bodily orifices, or examination through physical probing of any bodily orifice.

It is crucial to emphasize that the Act mandates searches to be performed by correctional officials of the same gender as the individual being searched, ensuring that officials of the opposite gender are not present. Additionally, all searches must be conducted in private. Correctional services officials who perform searches are obliged to compile a written report indicating the results of these searches. This report is provided to the Heads of Centres and Area Commissioners.

b) In practice

Many correctional centres in South Africa have alternative searching methods, using body scanners that are designed to detect metal as well as x-ray baggage scanners. However, some of these scanners are not working and officials have to resort to conducting the searches themselves.

Generally, inmates have expressed that they are made to squat and cough during searching and, in some instances, do frog jumps. This is arguably designed to expel any prohibited or smuggled items in the person of the individual. This begs the question whether women are made to do the same and also how these searches are performed while women are on their menstrual cycle and the potential harm

⁴ <http://www.dcs.gov.za/wp-content/uploads/2018/05/CORRECTIONAL-SERVICES-ACT-111-of-1998.pdf>

to their dignity.

In terms of the Act and in practice, women inmates are searched by female officials, out of sight of the public as well as male officials. Searching is either done in a closed room or behind a curtain to ensure privacy. Searching is usually conducted on a routine basis when remand detainees are coming from court as well as when all inmates have visitors. Searching is also conducted on an ad hoc basis in instances where the correctional centre conducts an operation to rid the facility of contraband, such as mobile cell phones and other prohibited items such as illicit drugs and weapons.

Access to healthcare

The advent of constitutional democracy in 1994 brought with it transformative social, political, and economic changes. This period introduced universal access to health care services in South Africa as a human right that finds articulation in the Constitution⁵. Its entrenchment in the constitution is arguably a normative standard that guarantees universal access without distinction, save for clearly defined circumstances.⁶ On the one hand, these services may be at the state's expense (free and subsidised) for those who rely on the public sector provision. On the other hand, such services can also be accessed through private institutions at a cost to the recipient.

Nonetheless, systemic challenges have been identified over the years, including: resource constraints; staff shortages; inadequate infrastructure⁷; medicine stockouts and the fiscal consequences of medico-legal claims⁸. Some of these challenges have been attributed to social dynamics such as migration – domestic and international⁹ - corruption¹⁰, as well as political and institutional management inefficiencies¹¹. For instance, evidence suggests that the public healthcare sector is under-resourced, yet it caters for approximately two-thirds of the population compared to the private healthcare sector which only covers roughly 15% of the population.¹²

Access to healthcare is provided in the correctional centre setting in that women and men have access to nurses, doctors, psychologists and, in some instances, psychiatrists and dentists. This is all accessible through the clinic or hospital situated inside the correctional centre, where inmates are permitted to seek medical attention as well as consult with the relevant medical professional. This does not prevent access to general hospital services which inmates will also have access to when necessary.

⁵ Section 27 of the Constitution.

⁶ *Soobramoney v Minister of Health (Kwazulu-Natal)*, CCT 32/97 (Constitutional Court of South Africa November 21, 1997). See also in relation to TB in correctional centres, *Minister of Correctional Services v Lee* 2012 (3) SA 617 (SCA) (Supreme Court of Appeal Judgment).

⁷ Parliamentary Monitoring Group. (2017). *Report of the Portfolio Committee on Health on the South African Human Rights Commission's Report Investigation into Oncology Services in Kwa-Zulu Natal Province, dated 01 November 2017*. Cape Town: Parliamentary Monitoring Group.

⁸ Member of the Executive Council for Health, *Gauteng Provincial Government v PN*, CCT 124/20 (Constitutional Court of South Africa 1 April 1, 2021) & Public Service Commission. (2018). *Investigation into health care facilities in KwaZulu-Natal: A special focus on professional ethics*. Pretoria: Public Service Commission.

⁹ White, J. A., & Rispel, L. C. (2021). Policy exclusion or confusion? Perspectives on universal health coverage for migrants and refugees in South Africa. *Health Policy and Planning*, 36(8), 1292–1306 and White, J. A., Blaauw, D., & Rispel, L. C. (2020). Social exclusion and the perspectives of health care providers on migrants in Gauteng public health facilities, South Africa. *PLoS one*, 15(12), e0244080. *PLoS one*, 15(12).

¹⁰ Van den Heever, A. (2021). Corruption, leadership and the corrosion of the public health system capabilities in South Africa. In A. Dhai, D. Ballot, & M. Veller, *Pandemics and Healthcare: Principles, Processes and Practice* (pp. 110-125). Juta and Company.

¹¹ South African Lancet National Commission. (2019). *Confronting the right to ethical and accountable quality health care in South Africa: A consensus report*. Pretoria : National Department of Health and Shisana, O., Dhai, A., Rensburg, R., Wolvaardt, G., Dudley, L., Patel, R. H., . . . Whittaker, S. (2019). Achieving high-quality and accountable universal health coverage in South Africa: a synopsis of the Lancet National Commission Report. *South African Health Review*, 69-80.

¹² Competition Commission of South Africa. (2019). *Health Market Inquiry-Final Findings and Recommendations Report*. Pretoria: Competition Commission.

There may however be a challenge in the provision of gender-specific health care in that women may not be receiving the relevant gynaecological care as prescribed in terms of age. For example, pap smears, mammograms and screening for certain cancers is not readily accessible. Furthermore, preventive vaccinations such as the Human Papillomavirus vaccine may also not be readily available.

Access to mental healthcare

According to the Department of Correctional Service's standard operating procedures, women are screened by a professional nurse on arrival or within reasonable time after arrival in a correctional centre. Mothers with babies also have their babies screened. Screening may include psychiatric evaluation for mental health challenges such as postpartum depression and clinical depression as well as the last menstrual period and pregnancy. Women may also be screened for use of alcohol, tobacco and other recreational drugs.

The appointed professional nurses have various qualifications and may include training in general, psychiatric and community nursing, as well as midwifery. Some nurses may also have primary healthcare training (assessment diagnosis, treatment and care) as well as advanced midwifery and neonatal nursing science. Nurses report to a medical practitioner who is assigned to the centre on a sessional or permanent basis.

To ensure suicide prevention management, women who are at potential suicide risk on screening are monitored on a continuous basis throughout the period of incarceration and certain risk prevention measures are put in place including a multi-disciplinary team. Recently, a mental health summit as well as a mental health conference was attended by correctional service officials. Mental health posters are also displayed in correctional centres to reduce the stigmatisation and discrimination of mental health.

Sanitary facilities and personal hygiene

Rule 5 of the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) states, *inter alia*, that accommodation of women prisoners shall have a regular supply of water for cleaning, cooking and personal care. Similarly, section 9 of the Correctional Services Act requires every prisoner must keep her clothes, bedding and cell clean and that the department must make means for that prisoner to meet those requirements.

During its visits, the SA NPM has noted that access to water may be problematic in some correctional centres, due to the lack of access to water in the surrounding community where the correctional centre is situated. In this regard, water is delivered to the facility by a mobile water tanker and thereafter distributed to the units.

Similarly, sometimes there is a shortage of hot or warm water in the cells accommodating women inmates. In some instances, an urn or water boiler is provided in each cell so women can boil their own water. This water is then put in a bucket or dish, and mixed with cold water for the women to bath and/or wash their personal items. Although the provision of the urn mitigates the risk of women using cold water to bath, it also presents the danger of the hot water being used as a weapon amongst the inmates. To date no such incidences have been reported.

Furthering the right to access to adequate hygiene, rule 5 of the Bangkok Rules also requires that there be free and sufficient supply of sanitary towels. During its monitoring visits, the SA NPM has noted that sanitary towels are provided to women free of charge. In addition, there are sanitary towels that are sold in the shop of the correctional centre. The challenge, however, is that some centres provide sanitary towels that are of poor quality and, even though a pack is received at a time, women would have to use two or three towels at a time.

Accommodation and food

Section 8 of the Correctional Services Act states, *inter alia*, that each prisoner must be provided with an adequate diet to promote good health and that such diet makes provision for children and pregnant women. The SA NPM has observed that food is provided to women three (3) times a day. This usually constitutes porridge, tea and bread for breakfast; a hot meal with vegetables, starch and protein for lunch; and bread and tea for dinner.

Although the food is generally sufficient, the time at which it is provided may be challenging, especially for women who are pregnant, breastfeeding and on chronic medication. Noting that the last meal is often served by 3pm, this leaves a lengthy period between dinner and breakfast the next day. During interviews, women have often complained that the food serving times leave them hungry in the night and those who take medication in the evening experience side effects for taking medication on an empty stomach.

Good practice: Gender-responsive centre for incarcerated women

On 12 December 2022, the Department of Correctional Services inaugurated the groundbreaking Gender Responsive Centre for incarcerated women in Atteridgeville, Gauteng, South Africa. This pioneering facility acknowledges the multifaceted factors impacting women's lives in the country, which may include victimisation, violence, gender-based violence, poverty, marginalisation and personal drug consumption. Despite constituting a small percentage of the total inmate population, women inmates may endure subpar conditions marked by overcrowding, violence and inadequate gender specific medical attention.

In this regard, the Department's ultimate objective is to establish an exemplary correctional centre aligning with the principles of the Bangkok Rules. Through this facility, the aim is to address the unique needs of women, ensuring that their period of incarceration fosters rehabilitation, development and successful reintegration upon release.

IV. Women in a special situations of vulnerability

LGBTIQ+ women

Through visits to correctional centres, the South African NPM identified some shortcomings relating to the conditions and treatment of sexual minorities. These shortcomings have been spotlighted by the case of Jade September.¹³ Jade is a transgender woman who had been incarcerated in three separate correctional centres in the Western Cape. In an expression of her identity, Jade wished to wear her hair long, wear female underwear, makeup and jewellery. The court ordered the Department of Correctional Services to allow the applicant to wear her hair long and in feminine style, address the applicant as a woman and use the female pronouns. It also ordered the respondents to introduce transgender sensitivity training.

As a follow up to the court order, the NPM facilitated training for Correctional Services in Gauteng and the Western Cape. The NPM also developed a train-the-trainer manual on Engaging LGBTIQ+ persons in places of deprivation of liberty. The manual was developed through focus groups and key person interviews with the Department of Home Affairs, the Department of Social Development, the South

¹³ September v Subramoney NO and Others (EC10/2016) [2019] ZAEQC 4; [2019] 4 All SA 927 (WCC) (23 September 2019).

African Police Service, the South African National Defence Force, the Department of Correctional Services and the NPM constituent member institutions.

V. Alternatives to detention

In certain cases, women may not be incarcerated but rather placed in community corrections which is a form of correctional supervision. According to section 50 of the Correctional Services Act (111 of 1998), community corrections is meant to provide services and interventions that will contribute to the reintegration of offenders as law abiding citizens into communities, by ensuring that probationers are rehabilitated, monitored and accepted by communities.

In this regard, the Department of Correctional Services met with the United Nations Office of Drugs and Crime (UNODC) SADC Regional Programme Officer in October 2022 at the George Management Area, Western Cape Region. The aim of the session was to improve the rehabilitation of offenders as well as discuss crime mitigating factors. The session further included a discussion on the Nelson Mandela Rules, the Bangkok Rules, Gender-Based Violence and Femicide (GBVF), reoffending of parolees, reviewing of correctional programmes, educating inmates on drug abuse and health standards in correctional facilities which is affected by factors such as overcrowding and limited access to primary healthcare. Subsequently, the UNODC and the Department of Correctional Services have also launched Women in Conflict with the Law (WICL) seminar to assist in addressing the challenges faced by women in society.

VI. Other relevant NPM information on women in prison

- + [SA NPM Reports](#)
- + JICS, [Annual report 2021/2022](#)

This report is part of the Global NPM report on Women in Prison.
Access the full report here: www.apt.ch/global-report