

**STATEMENT BY THE COMMUNITY LAW CENTRE TO THE AFRICAN COMMISSION ON HUMAN AND
PEOPLE'S RIGHTS IN RESPONSE TO THE INTER-SESSION ACTIVITY REPORT OF THE SPECIAL
RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA**

45TH ORDINARY SESSION OF THE ACHPR, 1-27 MAY 2009, THE GAMBIA

Madam Chairperson, Commissioners and other distinguished delegates, this statement by the Community Law Centre will focus on matters of prison reform in Africa. This is the focus of one of the Centre's projects, the Civil Society Prison Reform Initiative.

The work of the Special Rapporteur on Prisons and Conditions of Detention is greatly appreciated and we wish to continue our cooperation with the Special Rapporteur. We fully acknowledge that prison reform in Africa is an immensely complex matter and that the Commission has a most challenging task in this regard. We would like to use this opportunity to raise two substantive issues in respect of prison reform and trust that the Special Rapporteur will keep these in mind in executing his mandate. The first concerns private sector involvement in prison systems and the second sexual victimisation in prisons.

Private sector involvement

In recent years there has been a growing commitment among African states to transform and improve their prison systems. Reports from several African states in the past two years allude to infrastructure development, training of staff and other initiatives aimed at improving prison conditions. These are acknowledged and encouraged.

In the reform of African prison systems, there is little doubt that private sector companies involved in imprisonment as a business will seek opportunities for expansion. We have seen this in South Africa and plans are afoot for eight new privately operate prisons housing 24 000 prisoners in addition to the existing two privately operated prisons. Private sector involvement is not only restricted to operating prisons in their totality but also to the subcontracting of specific services such as catering and security. These private sector operations in the prison system have cost the South African tax payer dearly to date.

It is not our position to categorically oppose private sector involvement in prison systems. The results of private sector involvement are mixed but there is growing list of cases where private sector involvement has gone wrong and resulted in human rights violations and poor services. For many commentators the involvement of the private sector in prisons is a moral issue and some find the idea of 'profits from prisons' objectionable. This may indeed be the case, but it is important that we deal with the realities of the situation, regardless of our views on the morality of private sector involvement in prisons. It is against this background that we need to approach the matter of private sector involvement in prison systems with caution. Much has been written in the past 20 years about private sector involvement and the following are noted as guidelines:

- Contracts must be negotiated in a transparent manner to ensure that principles of good governance are maintained, with specific reference to the declaration of possible conflicts of interests.
- Terms of the contracts must not place an undue burden on state revenue and profits must be carefully structured.
- The duration of contracts should not be of an undue length and must be reviewable on a regular basis with punitive clauses.
- Civilian oversight and regular evaluations by independent authorities must form part of agreements.
- There must be a clear transference of skills between private operators and the state to the benefit of prisoners.

Sexual victimisation in prisons

Many stakeholders find it difficult to admit that sex takes place between men in prisons whether by coercion or consent. The extent of sexual victimisation between men in African prisons is not known but that it does happen it is certain, as reported in research from South Africa¹² and Zambia³. Research from the US indicates that between 7% and 12% of male inmates are raped an average of nine times.⁴ Societal constructs of masculinity and common myths around male rape, also create a veil of secrecy around this issue, preventing it from being addressed effectively through preventive measures and victim support services.⁵ It is important to take action on male rape in prisons for two reasons. Firstly, the state has a duty to ensure safe custody and protect the dignity of prisoners. Secondly, within the context of HIV/Aids it is of critical importance that male rape in prisons is effectively addressed.

In view of the above, the Community Law Centre would like to make the following recommendations for the Special Rapporteur to take note of:

- Prison officials need to be sensitised on the issue of male rape and trained on appropriate and effective preventive measures as well as correct responses.

¹ Harvey E (2002) 'Rape in Prison' *Track Two* Vol 11 No. 2.

² Mashabela P (2003) *Victims of rape and other forms of sexual violence in prisons*, Paper delivered at the XIth International Symposium on Victimology, Stellenbosch, 13-18 July 2003, South Africa.

³ Simooya O and Sanjobo N (2005) 'Responding to the challenge of HIV/AIDS behind bars – the In but Free project in Zambia' *Sexual Health Exchange* 2005 Vol 1 p. 1

⁴ James E. Robertson "Rape Among Incarcerated Men: Sex, Coercion and STDs" (2003) 17:8 *Aids Patient Care & STDs* 423 p 423.

⁵ Mashabela P (2003) *Victims of rape and other forms of sexual violence in prisons*, Paper delivered at the XIth International Symposium on Victimology, Stellenbosch, 13-18 July 2003, South Africa.

- Where necessary, legal reform needs to be undertaken to ensure that a gender neutral definition of rape is adopted in domestic legislation to enable the effective prosecution of perpetrators of male rape.
- Support services for victims of male rape need to be developed and/or made accessible to prisoners.
- Particular care needs to be taken to protect those vulnerable to male rape, such as children, gay and transgender individuals, first time prisoners, and prisoners of small physical stature. Prison administrations need to be encouraged to take proactive measures by providing information to newly admitted prisoners and, if possible, temporarily segregate new admissions until they have been properly orientated.
- Research on male rape in prisons needs to be encouraged and relied on to inform policy and practice.

We thank the Commission for this opportunity and wish the Special Rapporteur all the best in the execution of his mandate.

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