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MAPPING OF GOOD PRACTICES FOR THE MANAGEMENT OF TRANSGENDER PRISONERS

LITERATURE REVIEW

UNDP (2020). *Mapping of Good Practices for the Management of Transgender Prisoners*. Bangkok: UNDP.

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MAPPING OF GOOD PRACTICES FOR THE MANAGEMENT OF TRANSGENDER PRISONERS

LITERATURE REVIEW



Executive summary

Many transgender people face significant hurdles and challenges because their gender identity does not coincide with their sex assigned at birth. In prisons and other closed settings, these challenges are often exacerbated, amplified and multiplied. While most, if not all, prisoners are vulnerable during imprisonment because of the ways incarceration impacts their liberty and their autonomy and how structural factors constrain the realization of their basic human rights, some prisoners face additional punishments, leading to compounded vulnerability during their imprisonment.¹ Evidence confirms that, despite the obligations and recommendations in human rights instruments, implementation guidelines and operational standards, few countries and subnational jurisdictions have been able to meet the needs of transgender prisoners and honour international requirements.

The United Nations Development Programme (UNDP) office in Thailand commissioned a desk review of good practices in management of transgender prisoners. More than 100 documents were reviewed and analysed, focusing on over a dozen countries and jurisdictions, and looking at policies and practices across 19 dimensions relevant to transgender prisoners, including data, identification of transgender individuals, use of names and pronouns, escorting, housing, body searches, access to showers and bathrooms, access to clothes and personal commodities, confidentiality, access to health services, access to hormones, access to gender-affirming surgery, access to HIV services, access to psychosocial support, access to conjugal visits, access to information, access to complaints mechanisms, transgender committees and staff training.

Many of the issues presented in this report challenge the fundamental principles underpinning the rigid, binary cisnormative environment that defines the modern correctional system in place virtually everywhere.² Cisnormativity is the assumption that cisgender people, those whose gender identity matches their biological sex, are socially acceptable and the ways people act based on those assumptions. Meanwhile, prison practices and policies informed by cisnormative frameworks of sex

1 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

2 Ibid.; Jenness, V. and Fenstermaker, S. "Agnes goes to prison: Gender Authenticity, Transgender Inmates in Prisons for Men, and Pursuit of 'The Real Deal'" in *Gender & Society*. 2013. DOI: 10.1177/0891243213499446.

and gender often identify transgender people as safety and security risks which demand an additional workload.³ And some well-meaning approaches designed to manage those risks and alleviate the additional workload can exacerbate those very risks and increase the workload of prison staff by reinforcing the paradigms that discriminate against those who do not conform to gender norms.

However, this report shows that multiple policies and different practices are currently being implemented with varying degrees of success in a wide variety of jurisdictions across the globe in order to improve the management of transgender prisoners. Consideration of the legal and policy context and the operational environment has led authorities to apply different approaches: blanket policies versus case-by-case policies; general population housing versus segregation; protective custody versus dedicated units; single occupancy units versus shared cells; and based on sex assigned at birth and genitals versus gender identity; on pre-operative versus post-operative status; and on legal gender recognition.

Discussions related to these operational considerations are often grounded in the belief that there is a conflict between an objective of maintaining safety and security and the perception that respect for human rights is a privilege. Yet addressing the needs of transgender prisoners and aligning operations with the good practices documented in this report should be thought of not as a privilege or as only a strategy to further the advancement of human rights and raise standards of mental and physical health. It should also be seen as an effective strategy to improve overall prison management and reduce safety and security incidents.

Prison officials and officers (and the governments they work for) have a duty of care towards the people who are incarcerated in prisons, jails and other closed settings.⁴ Part of that duty of care is to ensure the safety and security of not only the communities around the institutions and the people who work in those institutions but also of the individuals detained in those institutions. As such, authorities must find an effective balance to simultaneously minimize the risks to the community, to the prison workers and to the prisoners, including transgender prisoners.

But that balance cannot be achieved through a simple choice where preserving safety and security in a correctional environment requires the sacrifice of the rights of transgender prisoners (or other minorities) and ignoring their specific needs, or vice versa. In fact, this report shows that addressing the needs of transgender prisoners will often contribute to reinforcing safety and security, reduce the risk of incidents, and lead to overall improvements in prison management. Therefore, by fully realizing a duty of care towards all prisoners, including transgender prisoners, governments and prison authorities will be moving closer to realizing their own internal objectives related to safety and security.

The biggest challenge in managing transgender prisoners is the paradigm shift that is often demanded of prison authorities in engaging in meaningful discussions with the prisoners about their own fates within the correctional environment. Many of the good practices to resolve the issues identified in this report require that prison authorities engage with transgender prisoners, solicit their opinions and take those opinions into consideration as they formulate and implement policies and procedures. Giving a choice to prisoners is an even greater challenge to the traditional top-down practices so common in the correctional sector.

3 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

4 Lynch, S. and Bartels, L. "Transgender prisoners in Australia: an examination of the issues, law and policy" in *Flinders Law Journal* (19). 2017: 185.

Yet good practices in terms of the management of transgender prisoners are those that ultimately empower transgender individuals and allow them to live freely in accordance with their sexual orientation and gender identity and expression (SOGIE) without discrimination, punishment or risk of violence. The meaningful involvement and participation of transgender people in decisions that impact their lives – especially while detained in closed settings – is critical to effective prison management. Ideally, transgender individuals, including those in and who have been in prison, should be involved in developing, implementing and monitoring and evaluating policies related to the incarceration of transgender people.

That said, it is clear at the conclusion of this global review that no one country or jurisdiction has implemented the best practices to address all issues that transgender prisoners face. In some cases, the literature remains vague about which approaches are indeed good practices, which are free of risks, and which are always fully effective. In that sense, the ideal combination of policies and practices for each jurisdiction or country should be the result of a negotiation between relevant stakeholders informed by evidence, including the content of this report.

Based on the good practices identified through the literature review, the following targeted recommendations have been formulated, which encourage governments and prison authorities to align their policies and practices with evidence of good practices. Additional recommendations for development partners, donors and community organizations have been included to encourage a concerted effort towards improving the management of transgender prisoners.

Improving management of transgender prisoners

The management of transgender prisoners is not an issue that solely affects transgender prisoners or the transgender community. All segments of the community, the criminal justice system (including other prisoners) and the health sector are impacted by ineffective management of transgender prisoners. As such, advocacy for improving the management of transgender prisoners should be a concerted effort that mobilizes the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, human rights activists, civil society groups engaged in sustainable development, representatives of the criminal justice system (from law enforcement to lawyers to judges) and health professionals and paraprofessionals, as well as academics, researchers and representatives from donor agencies. Promoting the good practices identified in this report and pushing responsible agencies to align their policies and practices with the recommendations below is instrumental to effective change and improving overall prison management.

Legal gender recognition

Governments should allow transgender individuals to legally change their gender and recognize their gender identity as binding, even in the context of prison management. Where gender recognition laws and policies are in place, prison authorities should encourage and support all transgender prisoners who desire to change their gender before the law. Ideally, the process should be user-friendly, speedy and provided at a low cost or free of charge. Efforts should be made to ensure that terms such as 'gender', 'gender identity', 'gender expression' and 'transgender' are adequately and unambiguously defined and grounded in the principle of self-determination across all relevant laws and policies.

Data

Governments must urgently produce and report data about transgender prisoners including the number of transgender prisoners and the approaches used by national and subnational governments in managing their needs. UNDP, other relevant development partners and community groups should advocate for governments to systematically report the number of transgender prisoners, in line with the two-step approach recommended by the Williams Institute,⁵ disaggregated by male-to-female and female-to-male transgender persons. More specifically, the following governments should be targeted in an initial round of advocacy efforts, given their leadership on the issue: Argentina, Australia, Canada, Colombia, England and Wales (UK), Ireland, Malta, Scotland (UK) and the United States (especially California).

Identification

Governments should allow for prisoners to self-identify as transgender, without the need for medical or psychological examination or confirmation, irrespective of legal recognition, legal documents and surgical status. This should be reflected in policies and practices.

Names and pronouns

Prison authorities should allow for the use of preferred names, titles and pronouns, in all verbal and written communication, irrespective of official documents and surgical status. Furthermore, consideration should also be given to prohibiting the use of names, titles and pronouns that are out of line with prisoners' gender identity and disciplining prison workers who fail to uphold policies and practices (as well as those who use derogatory, demeaning and stigmatizing language) in this regard. Respectful language and terms should always be used when discussing or referring to all individuals regardless of gender.

Escorting

Prison authorities should ensure that policies and practices for escorting – the practice of providing transgender prisoners with staff escorts when travelling between institutions and/or between sectors in the same institution – remain sensitive to marginalization and stigmatization of and discrimination against transgender prisoners, and ensure that such efforts are genuinely necessary where they are implemented. Given the potential drawbacks of a rigorous blanket escorting policy for transgender prisoners, it is most appropriate to consult the transgender prisoner to determine whether the individual would prefer to be escorted or not, and align the approach based on the individual prisoner's choice.

Housing

Governments and prison authorities should allow transgender prisoners to participate in the decision regarding their housing in prisons, be offered a choice balanced against security concerns, and be informed about the final outcomes related to their housing. Segregation and/or protective custody should be avoided at all costs, unless serious and irremediable safety and security issues

5 The GenIUSS Group. *Best Practices for Asking Questions to Identify Transgender and Other Gender Minority Respondents on Population-Based Surveys*. J. L. Herman (ed.). Los Angeles, CA: the Williams Institute. 2014.

limit housing options. If segregation does take place, such policies and practices should spell out a clear timeline and a maximum amount of time that transgender prisoners can be kept in segregation and/or protective custody, ideally measured in days rather than weeks or months.

Body searches

Prison authorities should prohibit frequent and unnecessary strip searches of transgender prisoners and encourage recordkeeping of the number of times each prisoner is searched in order to identify any discrimination. Except in emergency situations, transgender prisoners should be given a choice regarding the gender of the person conducting the search, to ensure that the search is conducted by a person of the appropriate gender, with minimum interference, while respecting personal dignity and privacy.

Access to bathrooms and showers

Prison authorities should take into account transgender prisoners' gender identity, physical status, dignity and personal safety when facilitating access to shower and bathroom facilities. Where dedicated private or separate facilities cannot be provided, prison authorities should put in place physical barriers to maximize privacy, without compromising safety and security.

Confidentiality

Prison authorities should limit access to and control the dissemination of personal and health information related to transgender prisoners. Policies should explicitly refer to prisoners' right to privacy, and safeguards and controls should be deployed to enforce this policy. However, some transgender prisoners may have their gender status revealed unavoidably simply because of where they are housed (for example, as a woman in a men's facility). Even in such cases, prison authorities must still protect the individual's privacy to the full extent possible, such as with regard to specifics of a prisoner's medical history.

Access to clothes and commodities

Prison authorities should facilitate access to clothes and personal commodities that allow a transgender prisoner to express their gender identity by offering gender-neutral purchase options, where any prisoner can purchase approved commodities, irrespective of gender. Where such gender-neutral options are not available, an alternative can be implemented by allowing transgender prisoners to purchase commodities approved for both men and women. Prison authorities should also consider allowing transgender prisoners to dress in clothes that align with their gender identity. However, where prisoner uniforms are required, transgender prisoners should be allowed to choose the uniform that they feel is most appropriate.

Access to health services

At a minimum, governments and prison authorities should ensure that access to health services and standards of care in prisons and other closed settings mirror those available in the community. Ideally, health service delivery in prisons should strive to surpass the availability and quality of health care delivered in community settings. Prison authorities should mobilize health expertise from external professionals and establish partnerships with relevant community groups to meet transgender prisoners' health needs.

Access to hormones

Government and prison authorities should acknowledge that hormone therapy is a necessary medical intervention to address gender incongruence. Ideally, people diagnosed with gender incongruence who are eligible for hormone therapy and choose to transition should receive support to initiate such therapy, even in prisons and closed settings. At a minimum, individuals who have started a hormone treatment regimen prior to entering correctional facilities should be supported to continue on the same or similar therapies and monitored accordingly. All validation requirements regarding prior hormone treatment should be waived, acknowledging that transgender people sometimes access hormones without medical supervision. Hormone therapy should always be provided to transgender prisoners who have undergone gender-affirming surgery, irrespective of access prior to incarceration. Where such health services are included in national health insurance schemes, the cost should be absorbed at an equal rate as for transgender people living in the community.

Access to gender-affirming surgery

Governments and prison authorities should allow gender-affirming surgery for transgender prisoners who have received a valid medical diagnosis of gender incongruence. Ideally, where such health services are included in national health insurance schemes, the cost should be absorbed at an equal rate as for transgender people living in the community.

Access to HIV services

Governments and prison authorities should facilitate access to a comprehensive package of HIV prevention, treatment, care and support services for all prisoners, including transgender prisoners. These services should ideally be linked with and integrated into national HIV health programmes, and accessible on a voluntary basis with informed consent and without coercion or pressure. HIV services for transgender prisoners should include information about the potential drug-drug interactions between antiretroviral treatment and hormones.

Access to psychosocial support

Prison authorities should acknowledge that transgender prisoners are generally more vulnerable than other prisoners. As such, prison authorities should facilitate access to psychosocial support for all transgender prisoners through multidisciplinary case management approaches, with meaningful engagement of the transgender prisoner.

Access to conjugal visits

Prison authorities should ensure that all prisoners enjoy the same rights to conjugal visits, irrespective of their sexual orientation or marital status.

Access to information

Prison authorities should ensure that targeted information materials are available in prisons to support transgender prisoners. Prison authorities should develop effective partnerships with community organizations that have relevant capacity in regard to transgender communities to provide information, education and communication tools to transgender prisoners. Prison authorities should ensure that all information available to transgender prisoners is written in gender-sensitive language.

Access to complaints mechanisms

Government and prison authorities should establish effective, accessible and confidential complaints mechanisms in all prisons. Prison authorities must ensure that, where complaints are made, prisoners filing such complaints do not fall victim to retaliation or are not subjected to further punishments.

Government and prison authorities should implement monitoring procedures to prevent, detect and respond to sexual abuse in areas such as hiring, training, supervision and monitoring, data collection, reporting, investigations and health care, and provide support for those who report abuse. Individuals must have multiple ways to make internal, private reports of sexual abuse and harassment, retaliation (by staff or other prisoners) and any staff negligence that may have contributed to abusive incidents. As noted, no disciplinary action should be taken against a prisoner for filing a grievance unless the agency can demonstrate that it was filed in bad faith.

Transgender committees

Prison authorities should establish multidisciplinary transgender committees with full and final authority in all matters related to the management of transgender prisoners. Ideally, transgender prisoners should be allowed to request to meet the transgender committee to submit formal requests and complaints, and transgender prisoners should be allowed to attend committee meetings that deal with their own case.

Staff training

Governments and prison authorities should ensure that all prison staff receive regular training to ensure they understand and address the special needs of transgender prisoners. Trainings should be designed to empower prison workers in preventing, identifying and responding to bullying, harassment and discrimination on the grounds of sex, sexual orientation, gender identity, gender expression and sex characteristics.

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Abbreviations and acronyms

ACT	Australian Capital Territory
ASEAN	Association of Southeast Asian Nations
APTN	Asia Pacific Transgender Network
Bangkok Rules	United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
BLIA	Being LGBTI in Asia
DOC	Department of Corrections
HIV	Human immunodeficiency virus
LGBTI	Lesbian, gay, bisexual, transgender and intersex
M&E	Monitoring and evaluation
Mandela Rules	United Nations Standard Minimum Rules for the Treatment of Prisoners
MOJ	Ministry of Justice
PREA	Prison Rape Elimination Act
SIDA	Swedish International Development Cooperation Agency
SGIE	Sexual orientation and gender identity and expression
SOP	Standard operating procedure
STI	Sexually transmitted infection
UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
WHO	World Health Organization

Acknowledgements

This report is the final output of a systematic multi-country literature review conducted by Mr Pascal Tanguay, on behalf of the United Nations Development Programme (UNDP) office in Thailand. Mr Supanee Pongruengphant, Project Manager for Business, Human Rights and LGBTI provided oversight, with support from Ms Jawying Lyster, Programme Management and Monitoring & Evaluation (M&E) Consultant, and Ms Katri Kivioja, Programme Specialist for the Being LGBTI in Asia (BLIA) project.

Special thanks are extended to peer reviewers who took the time to provide valuable input and suggestions prior to the release of this report:

- Joe Wong, Executive Director, Asia Pacific Transgender Network
- Thitayanun Nakpor, Executive Director, Sisters Foundation
- Zhan Chiam, Coordinator: Gender Identity and Gender Expression Programme, International Lesbian, Gay, Bisexual, Trans and Intersex Association
- Annette Digna Verster, Technical Officer on HIV, drug use and most at risk populations, World Health Organization
- Virginia Macdonald, Key Populations and Innovative Prevention Unit, World Health Organization
- Ehab Salah, Adviser on HIV in prisons, United Nations Office on Drugs and Crime
- Karima Benamara, Consultant, United Nations Office on Drugs and Crime
- Takeshi Matsumoto, Crime Prevention and Criminal Justice Officer, United Nations Office on Drugs and Crime
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- Coletta Youngers, Senior Fellow, Washington Office on Latin America and Senior Associate, International Drug Policy Consortium
- Teresa Garcia Castro, Programme Associate, Washington Office on Latin America
- Chontit Chuenurah, Chief, Implementation of the Bangkok Rules and Treatment of Offenders Programme, Thailand Institute of Justice

UNDP extends special thanks to the Swedish International Development Cooperation Agency (SIDA) for its financial contribution in support of the BLIA project that enabled the development of this report. UNDP would also like to thank the United Nations Office on Drugs and Crime (UNODC) for endorsing the report.

Introduction

Many transgender⁶ people face significant hurdles and challenges because their gender identity does not coincide with their sex assigned at birth. In community settings, transgender people are often confronted with the absence of legal gender recognition; family rejection and social exclusion; violations of their rights to education, employment and health; stigma, discrimination and transphobia; disproportionate sexual and physical violence and abuse; criminalization; and increased vulnerability to HIV and other sexually transmitted infections (STIs).⁷

In prisons and other closed settings, these challenges are often exacerbated, amplified and multiplied for transgender individuals. While most, if not all, prisoners are vulnerable during imprisonment because of the ways incarceration impacts their liberty and their autonomy and how structural factors constrain the realization of their basic human rights, some prisoners, such as transgender individuals, face additional punishments, leading to compounded vulnerability during their imprisonment.⁸ Evidence also shows that transgender people who are victims of criminal acts often face discrimination and abuse when seeking assistance from the legal system.⁹ In parallel, significant numbers of transgender people in correctional institutions also report abuse from other prisoners as well as from criminal justice personnel, including discrimination, harassment, assault and a lack of protection from other prisoners.

Transgender prisoners report daily experiences of sexual coercion and psychological distress, inadequate and inconsistent access to medical treatment, and higher risks of self-harm.¹⁰ Transgender prisoners are at higher risk for acquiring HIV and STIs due to underfunded and overcrowded prisons, limited provision of condoms and dental dams, limited access to pre-exposure prophylaxis, limited access to harm reduction services, and unprotected sex, risky sexual practices and sexual violence.¹¹

The United Nations (UN) Subcommittee on Prevention of Torture, the UN Committee Against Torture, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the UN Voluntary Fund for Victims of Torture consider that some practices perpetrated against transgender individuals detained in prisons and other closed settings can amount to torture.¹²

6 The World Health Organization defines transgender as “persons who identify themselves in a different gender than that assigned to them at birth. They may express their identity differently to that expected of the gender role assigned to them at birth. Trans/transgender persons often identify themselves in ways that are locally, socially, culturally, religiously or spiritually defined.” (World Health Organization Western Pacific Regional Office. *Meeting Report of the Consultation on HIV, STI and other Health Needs of Transgender People in Asia and the Pacific, Manila, 11–13 September 2012*. 2012.)

7 Joint United Nations Programme on HIV/AIDS. “Transgender People” in *The GAP Report*. Geneva, Switzerland. 2014

8 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

9 The International Gay and Lesbian Human Rights Commission. *Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia*. New York, USA. 2014; Arkles, G. “Safety and solidarity across gender lines: Rethinking segregation of transgender people in detention” in *Temple Political & Civil Rights Law Review* 18:2. 2009.

10 Lynch, S. and Bartels, L. “Transgender prisoners in Australia: an examination of the issues, law and policy” in *Flinders Law Journal* (19). 2017: 185.

11 Bromdal, A., Mullens, A. B., Philipps, T. M. and Gow, J. “Experiences of transgender prisoners and their knowledge, attitudes, and practices regarding sexual behaviors and HIV/STIs: A systematic review” in *International Journal of Transgenderism*. 2019 Jan 2; 20(1): 4–20.

12 “Targeted and tortured: UN experts urge greater protection for LGBTI people in detention” in *Press release*. UN Human Rights Office of the High Commissioner. Geneva, Switzerland. 23 June 2016.

Yet prison officials and officers (and the governments they work for) have a duty to prevent such risks and harms. The UN specifically notes that authorities must recognize specific risks, identify those who are in a vulnerable situation, protect them in ways that do not leave them isolated and implement necessary measures to prevent discriminatory practices.¹³ In addition, those same individuals and agencies have a duty of care towards people who are incarcerated in prisons, jails and other closed settings.¹⁴ Part of that duty of care is necessarily to ensure the safety and security of the communities around the institutions and of the people who work in those institutions, but the duty also extends to the individuals detained in those institutions. As such, authorities must find an effective balance to simultaneously minimize the risks to the community, to the prison workers and to the prisoners, including transgender prisoners.

While achieving that balance can be challenging for governments and individuals working in prisons and other closed settings, numerous obligations should be respected and honoured in the process. For example, international human rights instruments compel governments to protect all prisoners under their supervision and care, irrespective of sexual orientation and gender identity and expression (SOGIE), while facilitating their social reintegration.¹⁵ Specifically, all provisions included in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment, the United Nations Standard Minimum Rules for the Treatment of Prisoners, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment should apply to all prisoners without discrimination.¹⁶ In addition, the principle of equal treatment enshrined in these instruments requires that positive action be taken to eliminate discrimination and risks faced by transgender persons.¹⁷

In addition, the Yogyakarta Principles represent a set of standards to guide the application of human rights law in the context of sexual orientation and gender identity, specifically addressing the need to adequately meet the rights of LGBTI people in closed settings.¹⁸ The Standards of Care, published by the World Professional Association for Transgender Health, provide international evidence-based guidelines for promoting the overall health and well-being of transsexual, transgender and gender-nonconforming people, including in prisons and other closed settings. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as the “Bangkok Rules”) is a set of 70 tailored rules, focused explicitly on the management of female prisoners, supplementing existing international standards on the treatment of prisoners. UN treaty bodies also regularly identify problematic issues related to the incarceration of transgender individuals and issue remedial recommendations grounded on good practices.¹⁹

13 United Nations Committee Against Torture. *Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 22 March 2016, CAT/C/57/4.

14 Lynch, S. and Bartels, L. “Transgender prisoners in Australia: an examination of the issues, law and policy” in *Flinders Law Journal* (19). 2017: 185.

15 Atabay, T. *Handbook on prisoners with special needs*. United Nations Office on Drugs and Crime. Vienna, Austria. 2009.

16 Ibid.

17 Ibid.

18 Carr, N., McAlister, S. and Serisier, T. *Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison*. Irish Penal Reform Trust. Dublin, Ireland. February 2016.

19 Kirichenko, K. *United Nations Treaty Bodies: References to sexual orientation, gender identity, gender expression and sex characteristics 2016*. International Lesbian, Gay, Bisexual, Trans and Intersex Association. Geneva, Switzerland. November 2017.

The research conducted to inform the content of this report confirms that, despite the obligations and recommendations in those human rights instruments, implementation guidelines and operational standards, few countries and subnational jurisdictions have been able to meet the needs of transgender prisoners and honour international requirements. This report is designed to identify good practices in the management of transgender prisoners around the world in order to inform prison management policies and practices while supporting effective and strategic advocacy for the improved management of transgender prisoners.

The report includes a short overview of the methodological approach; a presentation of the main findings, divided by relevant issues, highlighting good practices in specific countries and jurisdictions; and a brief analysis of the media portrayal of advancement of prison policies and practices to accommodate transgender prisoner. A set of conclusions and targeted recommendations are included, which have also been incorporated into the executive summary of the report.

Methodology

UNDP Thailand, in partnership with the Inspire Project under patronage of Her Royal Highness Princess Bajrakitiyabha Narendiradebyavati of Thailand, has been providing technical support to the Department of Corrections (DOC) of the Ministry of Justice (MOJ) of Thailand to develop guidelines and standard operating procedures (SOPs) to promote effective, evidence-based and human rights-informed interventions by correctional officers for the improved management of transgender prisoners.

In July 2019, UNDP Thailand hired an international consultant to conduct a thorough literature review to identify good practices for the management of transgender prisoners across the globe. The identification of good practices in this report, in concurrence with respect for human rights and dignity of transgender prisoners, is meant to inform the development of SOPs, developed by a national consultant in August 2019, to support the DOC in improving the management of transgender prisoners in Thailand. This report should also be used to support similar efforts across the globe.

After an initial inception meeting with representatives from UNDP, the consultant finalized the methodology and the project timeline (see Table 1 below). The mapping of good practices relied exclusively on a desk-based literature review.

Table 1: Project timeline

Inception meeting with UNDP BLIA project	15 July 2019
Finalization of research protocol / mapping design	15–22 July 2019
Data collection	22–29 July 2019
Data analysis and preparation of draft report	29 July–25 August 2019
Peer review	25 August–30 September 2019
Submission of final report	1 October 2019

Data collection for the desk review included, but was not limited to, the review of national laws, policies, guidelines and reports from multiple jurisdictions; project reports; studies; grey literature such as media articles; and other relevant documents. A total of 109 documents were identified primarily through internet-based searches using Google. The specific keyword groups used are presented in Table 2 below. Further documents were identified through the references from initial documents selected for this analysis. Documents supplied by the UNDP Being LGBTI in Asia (BLIA) project team were also included in the analysis.

The identification of relevant literature was targeted at specific countries that have established good policies and practices related to transgender people. Based on the consensus established during the inception meeting, the countries targeted in the desk review included: Argentina, Australia, Brazil, Canada, England and Wales (UK), Ireland, Italy, Malta, the Netherlands, New Zealand, Scotland (UK) and the United States, especially the state of California. Additional countries and jurisdictions were added to the analysis based on findings in the literature, including Colombia, Ireland, New York State and Texas, while the Netherlands was then excluded given the lack of relevant literature related to transgender prisoners. Special attention was given to documents pertaining to Thailand

and applicable international guidelines, in particular the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) which were reviewed to assess potential entry points for good policies and practices in the context of managing gender issues in prisons and other closed settings.

Table 2: Keyword search

Keyword	In combination with...	
Transgender	Prison	Argentina
Trans woman	Closed settings	Australia
Trans man	Prisoner	Brazil
Gender	Inmate	Canada
	Incarcerated	England and Wales (UK)
	Detention	Ireland
	Detainee	Italy
		Malta
		Netherlands
		New Zealand
		Scotland (UK)
		United Kingdom
		United States of America (USA)
		California
		Good practice

The mapping of good practice covers the following issues: gender identification; segregation and housing by sex assigned at birth and gender identity; roles and duties of corrections officers (including body searches, use of names and pronouns, confidentiality and privacy, and escorting); access to health (general health and gender-affirming surgery) and HIV services (HIV testing, prevention and treatment) and commodities (hormones, binders, underwear and clothes, prosthetics, etc.); access to bathrooms, showers and hygiene; access to targeted psychosocial support (including information materials, suicide prevention, conjugal visits and external support); management of risks and adverse events; management of stigma and discrimination (including staff training, access to complaint mechanisms and transgender committees); and sexual and gender-based violence. In addition to the issues listed above, the review also includes a brief media analysis to highlight how issues related to transgender prisoners have been presented in the selected countries.

Once a draft report was available, it was shared with key stakeholders and selected partners to elicit feedback and comments.

Limitations

Limitations related to the implementation of the desk review include:

- Limited opportunities for consultation with technical partners, donor agencies, community representatives and project implementers in targeted countries and across the globe
- The desk review only included documents available in English given that no translators were available to support the project
- The desk review report presents findings from the published literature so findings may not reflect the actual situation in the selected countries, given that changes may have occurred after the publication of source materials and that policies, guidelines and other normative documents may not be applied in practice as intended
- Good laws and policies do not necessarily translate into good practices on the ground, and laws are not always implemented in a way that aligns with their official intent. For example, there are examples of good laws and policies in this report, but their implementation may be piecemeal.
- The literature reviewed is extremely incomplete and sometimes contradictory.

Main findings

This section includes the main findings of the literature review. The section is subdivided by key themes related to the management of transgender prisoners and includes data and identification of transgender individuals, use of names and pronouns, escorting, housing, body searches, access to showers and bathrooms, access to clothes and personal commodities, confidentiality, access to health services, access to hormones, access to gender-affirming surgery, access to HIV services, access to psychosocial support, access to conjugal visits, access to information, access to complaints mechanisms, transgender committees and staff training.

It is important to note that good practices in terms of the management of transgender prisoners are those that ultimately empower transgender individuals and allow them to live freely according to their SOGIE without discrimination, punishment or risk of violence. However, it is not always clear from the literature which practices are good ones. For example, some practices may be useful in protecting transgender prisoners but will ultimately contribute to their isolation, marginalization and further stigmatization. Despite the challenges, the findings below identify a range of potentially good practices for each issue.

Though not specifically identified under every component, the meaningful involvement and participation of transgender people in decisions that impact their lives – especially while detained in closed settings – is critical to effective prison management. At a minimum, transgender prisoners should be informed directly, in a respectful manner, about the decisions made by prison authorities regarding the issues included in this report and be given the opportunity to ask questions to clarify any confusion or concerns.²⁰ Ideally, transgender individuals, including those who are incarcerated and formerly incarcerated, should be involved in the development, implementation and monitoring and evaluation of prison policies.

Meanwhile, the good practices identified across the literature and presented in this report may not be applicable in every jurisdiction. Thus, the ideal combination of practices should be negotiated between prison administrators, transgender prisoners, representatives of the transgender community, their family members and communities, and other relevant stakeholders such as members of the transgender committee and health professionals.

Data

Globally, there are an estimated 10,743,619 prisoners,²¹ out of which 714,417 (or 6.65 percent) are women.²² However, data about transgender (and LGBTI) prisoners are not routinely collected in any of the countries reviewed in the context of this report. Indeed, data about the number and proportion of transgender prisoners are scarce and, when available, are often inconsistent between different data points for the same jurisdiction, thus providing only a range of information rather than something more precise. For example, the documents that were reviewed present four different data points about England and Wales (UK), three about the US, and two each about Australia, France, Malta and Thailand. Meanwhile, no data were available about the number or the proportion of transgender prisoners in Argentina, Ireland and the Netherlands. Many of the estimates are sourced

20 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.




21 Walmsley, R. *World prison population list. 12th edition*. Institute for Criminal Policy Research. 2018.

22 Walmsley, R. *World female imprisonment list. 4th edition*. Institute for Criminal Policy Research. 2017.

from media articles published between 2010 and 2019 with no formal references, raising questions about data quality.

Table 3 below shows the data collected from the literature about the jurisdictions relevant to this report.

Table 3: Number and proportion of transgender prisoners

	 Total number of prisoners ²³	 Number of transgender prisoners	 Proportion of transgender prisoners
Australia	42,942	4-429	0.01-1% ³³
Brazil	690,722	600 [Rio] ²⁴	0.90%
Canada	41,145	>411	>1% ³⁴
England and Wales (UK)	83,014	80 ²⁵ -1,500 ²⁶	0.1-1.81%
France	65,084	8-30 ²⁷	0.01-0.04%
Italy	59,135	60 ²⁸	0.10%
Malta	588	5 ²⁹ -7 ³⁰	0.01-1.1%
New Zealand	10,435	30 ³¹	0.29%
Thailand	364,288	1,834 ³² -9,471	2.60% ³⁵
USA	2,121,600	6,365-15,488	0.30 ³⁶ -0.73% ³⁷

23 Walmsley, R. World prison population list. 12th edition. Institute for Criminal Policy Research. 2018. 23.

24 "Rio prisons aim to curb abuse against trans inmates with new regulations" in *The Guardian*. 28 July 2015. Available at <https://www.theguardian.com/world/2015/jul/28/rio-prisons-abuse-transgender-inmates>

25 Gorden, C. et al. "A Literature Review of Transgender People in Prison: An 'invisible' population in England and Wales" in *Prison Service Journal*, 233, 2017: 11–22.

26 Hymas, C. "One in 50 prisoners identifies as transgender amid concerns inmates are attempting to secure prison perks" in *The Telegraph*. 7 September 2019. Available at <https://www.telegraph.co.uk/news/2019/07/09/one-50-prisoners-identify-transsexual-first-figures-show-amid/>

27 Le Carboulec, R. "The Plight of Trans Women in Prison" in *Buzzfeed*. 13 January 2018. Available at <https://www.buzzfeed.com/rozenlecarboullec/trans-women-in-french-prisons>

28 Potts, A. "Italy to open transgender-only jail" in *Star Observer*. 9 February 2010. Available at <http://www.starobserver.com.au/news/national-news/new-south-wales-news/italy-to-open-transgender-only-jail/21305>

29 Council of Europe. Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). 2016.

30 Vella, M. "Trans inmates claim degrading treatment in constitutional case filed against prisons" in *MaltaToday*. 13 July 2016. Available at https://www.maltatoday.com.mt/news/court_and_police/67477/trans_inmates_claim_degrading_treatment_in_constitutional_case_filed_against_prisons_minister#.XTbAbs2B3UJ

31 Gerlich, R. "New Zealand is green-lighting gender identity ideology and policy without considering the consequences" in *FeministCurrent.com*. 30 October 2018. Available at <https://www.feministcurrent.com/2018/10/30/new-zealand-green-lighting-gender-identity-ideology-policy-without-considering-consequences/>

32 "Prison system sets up new accommodations for LGBT inmates" in *The Nation*. 23 March 2017. Available at <https://forum.thaivisa.com/topic/974880-prison-system-sets-up-new-accommodations-for-lgbt-inmates/>

33 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

34 Ibid.

35 Saibouyaji, A. *The Assessment on the Current Management of Transgender Inmates in Selected Thai Prisons*. United Nations Development Programme. 10 October 2017.

36 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

37 Cassaidy, M. and Lim, L. *The Rights of Transgender People in Prisons*. Equal Justice Project. Auckland, New Zealand. 11 May 2016.

The UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity recently noted in his report that “information about the lived realities of lesbian, gay, bisexual, trans and gender-diverse persons around the world is, at best, incomplete and fragmented; in some areas it is non-existent . . . It means that in most contexts policymakers are taking decisions in the dark, left only with personal preconceptions and prejudices or the prejudices of the people around them.”³⁸ The UN Independent Expert on SOGI therefore recommends that data be collected systematically using tools and approaches that remain sensitive to the pervasive stigma and discrimination faced by LGBTI communities, in compliance with fundamental human rights obligations.³⁹ Furthermore, data collected about transgender prisoners, like any other prisoner, should be protected to avoid its misuse.

Identification

Identification refers to the recognition of a person’s transgender status. Rule 7 of the United Nations Standard Minimum Rules for Treatment of Prisoners (the Nelson Mandela Rules) encourages prison authorities to include in a prisoner’s file during admission “precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender.”⁴⁰ This rule is applicable to all persons deprived of liberty, and particularly relevant to LGBTI prisoners. Information regarding self-perceived gender is crucial for prison management and for making effective decisions regarding a range of issues. Globally, good practices allow for individuals to self-identify as such, without the need for medical or psychological examination or confirmation, irrespective of legal recognition, legal documents and surgical status.⁴¹

For example, many jurisdictions in Australia view gender on the basis of self-identification as opposed to biological sex.⁴² Specifically, in the Australian Capital Territory (ACT), no medical interventions have to be performed for a prisoner to be considered transgender.⁴³

In Ontario (Canada), the provincial prison policy recognizes a person’s self-identified gender.⁴⁴ In addition, the provincial policy recognizes that transgender prisoners may not have identity documents that reflect their gender identity, and therefore, self-identification is the primary consideration.⁴⁵ In addition, prison staff are encouraged not to make any assumptions about a prisoner’s gender identity or housing preference based on previous admissions.⁴⁶

38 Human Right Council. *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/41/45)*. United Nations General Assembly. 14 May 2019.

39 Ibid.

40 United Nations Office on Drugs and Crime. *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. Vienna, Austria. 2015.

41 Global good practices also recommend self-identification without medical, psychological or surgical requirements for legal gender recognition. For more details, please see Byrne, J. and Kismodi, E. *Legal Gender Recognition: A Multi-country Legal and Policy Review in Asia*. United Nations Development Programme & Asia Pacific Transgender Network. Bangkok, Thailand. 2017.

42 Cassaidy, M. and Lim, L. *The Rights of Transgender People in Prisons*. Equal Justice Project. Auckland, New Zealand. 11 May 2016.

43 Government of Australia. *Corrections Management (Reception and Management of Transgender Prisoners) Policy 2007*. Canberra, Australia. 2007.

44 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.

45 Ibid.

46 Ibid.

In Malta, a prisoner's self-declared gender identity must be respected irrespective of a person's legal gender.⁴⁷ Meanwhile, any intentional or persistent refusal to respect a prisoner's gender identity is considered a violation of the national prison policy.⁴⁸

In Scotland (UK), where gender recognition laws are in place, the prisoner's gender identity should be fully respected regardless of whether the prisoner can provide evidence of having a gender recognition certificate, and regardless of surgical status.⁴⁹

Although not considered good practice, in jurisdictions where self-identification is not possible and/or not allowed, alternatives should seriously be considered. For example, in the United States, the Prison Rape Elimination Act (PREA) of 2003 stipulates that facilities are not authorized to conduct a physical search of prisoners' genitals for identification during intake screening.⁵⁰ Instead, prisoners may be asked to state their gender and, in the event that a prisoner refuses to disclose this information, the facility is prohibited from disciplining the prisoner and must ascertain the prisoner's gender through alternative means, such as reviewing medical records or obtaining confirmation from a private medical practitioner who has conducted a general medical examination.⁵¹ In Harris County, Texas, for example, questions relating to a prisoner's anatomy and/or surgical status can only be asked by authorized medical personnel in the context of ensuring proper medical treatment.⁵²

Names and pronouns

The use of preferred names, titles and pronouns, in all verbal and written communication, irrespective of official documents⁵³ and surgical status, is a good practice implemented in a number of countries and jurisdictions. Some jurisdictions even prohibit the use of names, titles and pronouns that are not aligned with the prisoners' gender identity. Evidence shows that the use of preferred names, titles and pronouns has improved prison management by facilitating a more cooperative relationship between transgender prisoners and others,⁵⁴ while reducing stress,⁵⁵ depression and anxiety.⁵⁶ Respectful language and terms should always be used when discussing or referring to all individuals regardless of gender.⁵⁷

47 Correctional Services Malta. *Malta Prison Policy* (August 2016).

48 Ibid.

49 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

50 Routh, D., Abess, G., Makin, D. et al. "Transgender Inmates in Prisons: A Review of Applicable Statutes and Policies" in *International Journal of Offender Therapy and Comparative Criminology*. 2015. DOI: 10.1177/0306624X15603745.

51 Ibid.

52 National Center for Transgender Equality. *Policies to increase safety and respect for transgender prisoners: A guide for agencies and advocates*. Washington DC, USA. October 2018.

53 Official documents include birth certificates, passports, ID cards such as but not limited to drivers' licences, and arrest warrants.

54 National Center for Transgender Equality. *Policies to increase safety and respect for transgender prisoners: A guide for agencies and advocates*. Washington DC, USA. October 2018.

55 US Department of Justice. *Transgender Offender Manual*. 11 May 2018.

56 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

57 US Department of Justice. *Medical Management of Transgender Inmates*. December 2016.

In Australia, state-level policy instruments in ACT, New South Wales (NSW) and South Australia emphasize addressing transgender prisoners in gender-neutral terms or by their chosen names and pronouns.⁵⁸ For example, the NSW Custodial Operations Policies and Procedures stipulate that:

Transgender and intersex inmates are to be addressed by their chosen name and according to their identified gender. Male-to-female transgender inmates are not to be called by their male given names (regardless of what is recorded on their warrant file) or referred to as 'he'; they are to be called by their female names and referred to as 'she'. A similar principle applies for female-to-male transgender inmates.⁵⁹

Similarly, in Canada, the Ontario provincial prison policy requires that transgender prisoners be addressed by their preferred names and pronouns, irrespective of official documents:

Inmates will be referred to by their preferred name(s) and gender pronoun (e.g., he, she, him, her, they, ze, hir (ze/hir are gender neutral pronouns that can be used instead of gender specific ones)) verbally and in all written documents, except in the rare cases that an inmate's legal name is required for identification purposes.⁶⁰

In Malta, transgender prisoners' preferred names, titles and pronouns must be respected irrespective of legal gender, as an indication of basic respect.⁶¹ The prisoners' preferred names, titles and pronouns should be used in all verbal communication with and about them, even where these do not correspond with the details recorded on the warrant or other legal documents.⁶² A prisoner's self-declared name, title and pronoun do not by themselves provide the prisoner any additional rights.⁶³ Nonetheless, when a prisoner adopts a name, title and pronoun that mismatches their gender identity, they must be made aware of the legal gender recognition procedures available in Maltese law and how they can accede to them.⁶⁴

In New Zealand, prison staff are required to use transgender prisoners' preferred names and pronouns in all communications and interactions, including in prisoner notes, plans and reports, even when preferred names are different from those on official documents.⁶⁵ In addition, prison staff are required to record the preferred names and pronouns in the official prison's information management system.⁶⁶ Prison staff are encouraged to advise transgender prisoners that they can change their name legally and, if requested, to provide them with the necessary information to do so.⁶⁷

58 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

59 Government of New South Wales. *Custodial operations policy and procedures*. December 2017.

60 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.

61 Correctional Services Malta. *Malta Prison Policy (August 2016)*.

62 Ibid.

63 Ibid.

64 Ibid.

65 Department of Corrections (New Zealand). *Prison Operations Manual*.

66 Ibid.

67 Ibid.

In Scotland (UK), transgender prisoners' preferred names, titles and pronouns should be used in all verbal communication with and about the person in custody, even where these do not correspond with the details recorded on the warrant.⁶⁸ Similarly, in England and Wales (UK), transgender prisoners must be allowed to adopt a gender-appropriate or gender-neutral name and be addressed by others by their preferred (or gender-neutral) names and pronouns.⁶⁹

In California (USA), Senate Bill 132 requires all staff and contractors who have contact with prisoners to consistently use the preferred gender pronoun, title, and name in all verbal and written communications with and regarding that individual.⁷⁰ In Santa Clara County, California (USA), prison staff are required to address transgender prisoners using their preferred names, titles and pronouns, as recorded in a specific form completed and signed by transgender prisoners upon initial admission in the prison.⁷¹

In the event that transgender prisoners cannot be addressed by their preferred names, titles and pronouns, the alternative is to rely on using either gender-neutral terms or prisoners' last names, as is done in Harris County, Texas (USA), although such a practice should be considered a second- option that is just slightly better than regular misgendering (mistaking someone's chosen gender). Indeed, using prisoners' preferred names, titles and pronouns does not constitute a privilege, generates no additional work for prison staff, and represents a necessary first step in implementing effective prison reform for the improved management of transgender prisoners.

Escorting

Escorting refers to the practice of providing transgender prisoners with staff escorts when travelling between institutions and/or between sectors in the same institution. Across the literature, very limited attention is given to the provision of effective guidance regarding escorting of transgender prisoners. Only in Australia, specifically in New South Wales, do policies and procedures provide guidance on escorting transgender prisoners.

The NSW policy allows for transgender prisoners in women's facilities to be escorted with other women prisoners on the condition that there are no safety or security concerns. In a male facility, however, transgender prisoners are to be kept separate from all other prisoners during escorts to avoid the risk of physical or sexual assault by other prisoners in transit.⁷²

While this practice of separation is designed to ensure the safety of all prisoners and avoid the risk of physical or sexual assault incidents occurring during transit,⁷³ the practice could be perceived as transgender prisoners requiring 'special attention.' As such, escorting policies and practices should remain particularly sensitive to the marginalization and stigmatization of and discrimination against transgender prisoners, and ensure that such practices are genuinely necessary where they are

68 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

69 Ministry of Justice. *Review on the Care and Management of Transgender Offenders*. London, United Kingdom. November 2016.

70 "California passes Sen. Wiener's legislation to ensure incarcerated transgender people are housed according to their gender identity" in *Press release*. Equality California. Sacramento, USA. 23 May 2019. Available at <https://www.eqca.org/release-senate-passes-sb-132/>

71 County of Santa Clara. *Policy and Procedure Manual: Custody Policy 14.17 – Inmate Rights, LGBTQI Inmates*. 11 January 2018.

72 Lynch, S. and Bartels, L. "Transgender prisoners in Australia: an examination of the issues, law and policy" in *Flinders Law Journal* (19). 2017: 185.

73 Government of New South Wales. *Corrective Services NSW Operations Procedures Manual*. Sydney, Australia. 2015.

implemented. Given the potential drawbacks of a rigorous blanket escorting policy for transgender prisoners, it is most appropriate to consult the transgender prisoner to determine whether they would prefer to be escorted or not, and align the approach based on the individual prisoner's choice.

Housing

Housing refers to the location where and the conditions in which transgender prisoners are detained in prisons and closed settings. The housing of transgender prisoners is arguably the most challenging issue. Defining good practices in this context is difficult given the range of options, practices and policies that are in place across jurisdictions throughout the world. Essentially, transgender prisoners challenge the fundamental principles underpinning the rigid, binary cisnormative environment that defines the modern correctional system that is in place virtually everywhere.⁷⁴

Blanket rulings on policies and protocols regarding the management of transgender prisoners, i.e. that apply to all transgender prisoners, may or may not be positive. They ensure consistency and homogeneity, and do not provide opportunities for deviation and adaptation. If they favour housing transgender prisoners according to their gender identity, these could be considered good practices. However, if they require all transgender prisoners to be housed in institutions and wings based on their sex assigned at birth, the gender on their official documents, and/or their genitalia, these cannot be considered good practices.

Policies that require a case-by-case decision may lead to better practices, especially where each case is reviewed by an effective transgender committee (see below about transgender committees). Giving an option to (or at least soliciting the opinion regarding the preference of) the transgender prisoner in making decisions about housing – especially to ask for their input regarding perceived risks, health concerns, access to rehabilitation programmes and access to health services – is a good practice that can significantly improve prison management.

In Argentina,⁷⁵ Colombia,⁷⁶ Ecuador,⁷⁷ Harris County, Texas (USA),⁷⁸ Santa Clara County, California (USA),⁷⁹ South Australia (Australia),⁸⁰ Sweden,⁸¹ and England and Wales (UK),⁸² transgender prisoners are consulted and invited to weigh in on the decision regarding their placement in correctional facilities. In Ontario (Canada), consulting with transgender prisoners is a requirement for all decisions regarding their housing in correctional facilities.⁸³

74 Jenness, V. and Fenstermaker, S. "Agnes goes to prison: Gender Authenticity, Transgender Inmates in Prisons for Men, and Pursuit of 'The Real Deal'" in *Gender & Society*. 2013. DOI: 10.1177/0891243213499446; Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

75 Le Carboulec, R. "The Plight of Trans Women in Prison" in *Buzzfeed*. 13 January 2018. Available at <https://www.buzzfeed.com/rozennelecarboulec/trans-women-in-french-prisons>

76 Ibid.

77 Ibid.

78 Cassaidy, M. and Lim, L. *The Rights of Transgender People in Prisons*. Equal Justice Project. Auckland, New Zealand. 11 May 2016.

79 County of Santa Clara. *Policy and Procedure Manual: Custody Policy 14.17 – Inmate Rights, LGBTQI Inmates*. 11 January 2018.

80 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

81 "Transgender / transsexual inmates in European prisons" in *EuroPris.org*. Available at <https://www.europris.org/epis/kms/?detail=206>

82 Ministry of Justice. *Review on the Care and Management of Transgender Offenders*. London, United Kingdom. November 2016.

83 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.

In the United Kingdom (excluding Northern Ireland), where legal gender recognition laws and policies are in place, a blanket policy has been approved to remand transgender prisoners based on specific criteria (see below). However, this is complemented by the practice that transgender prisoners who do not have a gender recognition certificate may be placed in a gender-appropriate prison on a case-by-case basis.⁸⁴ Across most jurisdictions in the United States, similar blanket policies exist, although these can be overturned at the discretion of prison authorities.⁸⁵ However, in New York State (USA), prison policies require that all housing assignment for transgender prisoners be done on a case-by-case basis through a multifaceted analysis of risks, health needs and overall safety.⁸⁶ Meanwhile, in Brazil, decisions regarding housing for transgender prisoners are exclusively made at the discretion of prison directors.⁸⁷

Fundamentally, the housing of transgender prisoners is a decision that must define whether the prisoners will be located with people who share the same sex assigned at birth (and physical genitalia) or with people who share the prisoners' gender identity. Good practices are those that allow transgender prisoners to be housed in the institutions and sections with people who share the same gender identity.

For example, in Argentina,⁸⁸ Colombia,⁸⁹ the District of Columbia (USA),⁹⁰ Ecuador,⁹¹ Mexico City,⁹² Scotland (UK),⁹³ and Sweden,⁹⁴ transgender prisoners are housed according to their gender identity. In New South Wales (Australia), transgender prisoners are housed according to their gender identity, unless it is determined through case management that the prisoner should more appropriately be assigned to a correctional facility of their biological gender.⁹⁵ In Ontario (Canada), transgender inmates must be housed in facilities based on their gender identity – regardless of their anatomy, surgical status and official documents⁹⁶ – unless the prisoner explicitly requests otherwise, or unless there are overriding safety and/or health concerns that cannot be resolved.⁹⁷ Furthermore, the

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- 84 Lambie, S. "Rethinking gendered prison policies – Impacts on transgender prisoners" in *ECAN Bulletin*. University of London. 16. August 2012.
- 85 Gathright, J. "The Guidelines for Protection of Transgender Prisoners Just Got Rewritten" in *National Public Radio*. 12 May 2018. Available at <https://www.npr.org/sections/thetwo-way/2018/05/12/610692321/the-guidelines-for-protection-of-transgender-prisoners-just-got-rewritten>
- 86 NYC Board of Correction. *An Assessment of the Transgender Housing Unit*. February 2018.
- 87 Hochdorn, A. et al. "Narratives of Transgender People Detained in Prison: The Role Played by the Utterances 'Not' (as a Feeling of Hetero- and Auto-rejection) and 'Exist' (as a Feeling of Hetero- and Auto-acceptance) for the Construction of a Discursive Self. A Suggestion of Goals and Strategies for Psychological Counseling" in *Frontiers in Psychology*. 8:2367. 2018.
- 88 Le Carboulec, R. "The Plight of Trans Women in Prison" in *Buzzfeed*. 13 January 2018. Available at <https://www.buzzfeed.com/rozennelecarboulec/trans-women-in-french-prisons>
- 89 Ibid.
- 90 Upperton, T. J. *Time for reform: Protecting gender identity under the Human Rights Act 1993*. Victoria University of Wellington. Wellington, New Zealand. 2016.
- 91 Le Carboulec, R. "The Plight of Trans Women in Prison" in *Buzzfeed*. 13 January 2018. Available at <https://www.buzzfeed.com/rozennelecarboulec/trans-women-in-french-prisons>
- 92 Chiam, Z., Duffy, S. and González Gil, M. *Trans Legal Mapping Report 2017: Recognition before the law*. International Lesbian, Gay, Bisexual, Trans and Intersex Association. Geneva, Switzerland. November 2017.
- 93 Carr, N., McAlister, S. and Serisier, T. *Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison*. Irish Penal Reform Trust. Dublin, Ireland. February 2016.
- 94 "Transgender / transsexual inmates in European prisons" in *EuroPris.org*. Available at <https://www.europpris.org/epis/kms/?detail=206>
- 95 Corrective Services NSW. *Policy and procedures manual*. March 2015.
- 96 Marchildon, J. "Canada's Prisons Will Now Place Offenders Based on Gender Identity, Not Anatomy" in *GlobalCitizen*. 5 February 2018. Available at <https://www.globalcitizen.org/en/content/canada-prisons-gender-equality/>
- 97 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.

Ontario prison policy places the onus on the prison management to demonstrate that security and/or health concerns cannot be addressed, essentially prioritizing prisoner preference over management decisions.⁹⁸ The Ministry of Justice of England and Wales (UK) is explicit, in that:

*Allowing transgender offenders to experience the system in the gender in which they identify will, in the great majority of cases, represent the most humane and safest way to act. We believe it will also assist successful rehabilitation.*⁹⁹

In the United States, PREA dictates that decisions must give “serious consideration to transgender or intersex inmates’ own views with respect to safety.” The assessment, therefore, must consider transgender prisoners’ gender identity – that is, if the prisoner self-identifies as either male or female. A policy may also consider a prisoner’s security threat level, criminal and disciplinary history, current gender expression, medical and mental health information, vulnerability to sexual victimization, and likelihood of perpetuating abuse.¹⁰⁰

Policies and procedures that compel housing decisions based on sex assigned at birth and genitalia (including based on official documents) are never considered good practices in the context of managing transgender prisoners. However, where housing decisions are made based on physical genitalia, further policies and procedures need to be elaborated regarding official documents, legal gender recognition and the pre- and post-operative status of transgender prisoners.

For example, transgender prisoners in Malta are housed according to the information in official documents (such as birth certificates, identity cards and passports).¹⁰¹ In New Zealand, transgender prisoners are housed according to their sex assigned at birth, based on official documents such as birth certificates,¹⁰² unless gender-affirming surgery has been completed and birth certificates have been officially modified.¹⁰³ However, national guidelines in New Zealand allow prisoners who want to be relocated according to their gender identity, but don’t have the required birth certificate, to apply for a transfer.¹⁰⁴ Transgender prisoners are ineligible if they have committed a sexual offense, but prisoners who have already revised their birth certificates are allowed to be housed in accordance with them, regardless.¹⁰⁵ In the overwhelming majority of the states in the United States, perceived safety and security concerns are used to justify housing transgender prisoners according to their sex assigned at birth and/or their physical genitalia,¹⁰⁶ overriding any and all other considerations.¹⁰⁷

98 Ibid.

99 Ministry of Justice. *Review on the Care and Management of Transgender Offenders*. London, United Kingdom. November 2016.

100 National PREA Resource Center. *Does a policy that houses transgender or intersex inmates based exclusively on external genital anatomy violate Standard 115.42(c) & (e)?* 23 March 2016. Available at: <https://www.prearesourcecenter.org/node/3927>.

101 Correctional Services Malta. *Malta Prison Policy (August 2016)*.

102 Department of Corrections (New Zealand). *Prison Operations Manual*.

103 Upperton, T. J. *Time for reform: Protecting gender identity under the Human Rights Act 1993*. Victoria University of Wellington. Wellington, New Zealand. 2016.

104 Department of Corrections (New Zealand). *Prison Operations Manual*.

105 Gerlich, R. “New Zealand is green-lighting gender identity ideology and policy without considering the consequences” in *FeministCurrent.com*. 30 October 2018. Available at <https://www.feministcurrent.com/2018/10/30/new-zealand-green-lighting-gender-identity-ideology-policy-without-considering-consequences/>

106 Bassichis, M. *“It’s war in here”: A Report on the Treatment of Transgender and Intersex People in New York State Men’s Prisons*. Sylvia Rivera Law Project. New York, USA. 2007.

107 Cassaidy, M. and Lim, L. *The Rights of Transgender People in Prisons*. Equal Justice Project. Auckland, New Zealand. 11 May 2016.

In the Northern Territory, South Australia and Queensland (Australia), transgender prisoners are housed based on their surgical status.¹⁰⁸ No specific policies regarding the accommodation or treatment of transgender prisoners are in place in Ireland, so transgender prisoners are generally housed according to their genitalia or assigned sex at birth.¹⁰⁹

Where legal gender recognition laws and policies are in place, the challenges regarding the housing of transgender prisoners can be streamlined and simplified. For example, in the United Kingdom excluding Northern Ireland, transgender prisoners remanded into custody are housed according to their legally recognized gender, unless exceptional circumstances require otherwise.¹¹⁰ However, even with legal gender recognition, decisions regarding the housing of transgender inmates can still pose major hurdles for both prison management and transgender prisoners (see below).

Meanwhile, additional decisions need to be made about housing transgender prisoners in the general population, in segregation/protective custody, or in dedicated housing. Furthermore, prison policies and procedures regarding the housing of transgender prisoners must also include guidance about whether transgender prisoners will be accommodated in single occupancy units or in shared cells, with the best interest and consent of the prisoner.

Generally, segregation and/or protective custody should be avoided at all costs, unless serious and irremediable safety and security issues limit housing options. Although transgender prisoners may be vulnerable to abuse at the hands of other prisoners, segregation and isolation is not an appropriate strategy to address this vulnerability. It is difficult for prisoners who are isolated or placed in protective custody to access education, training, recreation, employment and other support services that are available to those in the prison's general population.

If segregation is in theory justified, such policies and practices should spell out a clear timeline and a maximum amount of time that transgender prisoners can be kept in segregation and/or protective custody,¹¹¹ ideally measured in days rather than weeks or months. The literature is clear that such practices, especially in cases of prolonged detention, are rarely effective for reducing safety and security risks, while amplifying stigma, discrimination and marginalization of transgender prisoners. Indeed, the line between prisoner safety and transphobic discrimination can be easily blurred, and prison officials can conceal their discriminatory behaviour by claiming that they are acting to protect transgender prisoners, thereby remaining unaccountable for their actions.¹¹²

108 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

109 Carr, N., McAlister, S. and Serisier, T. *Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison*. Irish Penal Reform Trust. Dublin, Ireland. February 2016.

110 Miller, S. "Transgender wings are planned for British jails in bid to stop inmates who have undergone a sex-change serving their sentences in women's prisons" in *MailOnline*. 11 February 2019. Available at <https://www.dailymail.co.uk/news/article-6687873/UK-jails-transgender-wings-two-female-inmates-sexually-assaulted-trans-inmate.html>

111 Lynch, S. and Bartels, L. "Transgender prisoners in Australia: an examination of the issues, law and policy" in *Flinders Law Journal* (19). 2017: 185.

112 Justice for Action. *Transgender Inmates – General*. 2002. Available at <https://www.justiceaction.org.au/prisons/prison-issues/conditions/400-2015-03-09-01-24-07-192>

In Scotland (UK), transgender prisoners are ordinarily placed in single cells,¹¹³ as is the case in England and Wales (UK).¹¹⁴ In New Zealand, transgender prisoners are placed in single cell accommodation upon initial reception.¹¹⁵ In ACT (Australia), transgender prisoners are placed in single cell accommodation, or with other prisoners who self-identify as transgender.¹¹⁶ In Malta, requests for single cell accommodation related to a prisoner's gender identity, gender expression and/or sex characteristics must be assessed, recorded and addressed as a priority.¹¹⁷ Furthermore, the Malta prison policy limits the use of segregation to a maximum of seven days.¹¹⁸

In Argentina,¹¹⁹ Italy,¹²⁰ and Thailand,¹²¹ dedicated prisons and wings have been established to house transgender prisoners. In Argentina, following a recommendation by the Federal Ombudsman of Prisons issued in 2013, one of the houses of the colony of Ezeiza was repurposed to accommodate transgender women, ensuring their access to a progressive, semi-open regime where prisoners can benefit from temporary leave to prepare for their release back into the community, on an equal basis with other prisoners.¹²² In 2010, Italy converted a women's prison in Pozzale into the world's first dedicated establishment for transgender prisoners.¹²³ In Thailand, the first special wing for transgender prisoners was created at Minburi prison in March 2017, with the fundamental objective of improving overall prison management.¹²⁴ Transgender prisoners who have received gender-affirming surgery are accommodated in separate cells in the women's section of the Pattaya Remand Prison.¹²⁵ Self-identified transgender prisoners in Bangkok's Klong Prem Prison are also housed in a dedicated section.¹²⁶

113 Carr, N., McAlister, S. and Serisier, T. *Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison*. Irish Penal Reform Trust. Dublin, Ireland. February 2016.

114 Hymas, C. "One in 50 prisoners identifies as transgender amid concerns inmates are attempting to secure prison perks" in *The Telegraph*. 7 September 2019. Available at <https://www.telegraph.co.uk/news/2019/07/09/one-50-prisoners-identify-transsexual-first-figures-show-amid/>

115 Department of Corrections (New Zealand). *Prison Operations Manual*.

116 Government of Australia. *Corrections Management (Reception and Management of Transgender Prisoners) Policy 2007*. Canberra, Australia. 2007.

117 Correctional Services Malta. *Malta Prison Policy (August 2016)*.

118 Ibid.

119 Byrne, J. *Discussion Paper: Transgender Health and Human Rights*. United Nations Development Programme. New York, USA. December 2013.

120 "Italy's new Pozzale Prison for Transgender Inmates: A Photo Essay Waiting to Happen" in *Prison Photography.org*. 13 January 2010. Available at <https://prisonphotography.org/2010/01/13/italys-new-pozzale-prison-for-transgender-inmates-a-photo-essay-waiting-to-happen/>

121 Prison system sets up new accommodations for LGBT inmates" in *The Nation*. 23 March 2017. Available at <https://forum.thaivisa.com/topic/974880-prison-system-sets-up-new-accommodations-for-lgbt-inmates/>

122 Association for the Prevention of Torture. *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*. Geneva, Switzerland. 2018.

123 Potts, A. "Italy to open transgender-only jail" in *Star Observer*. 9 February 2010. Available at <http://www.starobserver.com.au/news/national-news/new-south-wales-news/italy-to-open-transgender-only-jail/21305>

124 "Prison system sets up new accommodations for LGBT inmates" in *The Nation*. 23 March 2017. Available at <https://forum.thaivisa.com/topic/974880-prison-system-sets-up-new-accommodations-for-lgbt-inmates/>

125 Ibid.

126 Ibid.

In Brazil, a few prisons have established special sections for transgender prisoners.¹²⁷ Similarly, in San Francisco (USA), the “pod” model was established to segregate all prisoners who present heightened vulnerability to being detained in the general population.¹²⁸ Reports indicate that the transgender housing unit at Rikers Island in New York (USA) is being closed.¹²⁹ Meanwhile, in England (UK), plans are in place to open a dedicated prison for transgender prisoners.¹³⁰

In contrast, Colombia’s General Regulation on Correctional Establishments explicitly prohibits the creation of special units aimed at segregating or excluding persons on the basis of their sexual orientation or gender identity.¹³¹ Similarly, the Ontario (Canada) prison policy explicitly states that:

*Wherever possible and subject to inmate preference, trans inmates will be integrated into the general population and not isolated unless it can be proven that there are overriding health and safety concerns present, which cannot be resolved.*¹³²

127 Hochdorn, A. et al. “Narratives of Transgender People Detained in Prison: The Role Played by the Utterances ‘Not’ (as a Feeling of Hetero- and Auto-rejection) and ‘Exist’ (as a Feeling of Hetero- and Auto-acceptance) for the Construction of a Discursive Self. A Suggestion of Goals and Strategies for Psychological Counseling” in *Frontiers in Psychology*. 8:2367. 2018.

128 Mann, R. “The treatment of transgender prisoners, not just an American problem – A comparative analysis of American, Australian, and Canadian prison policies concerning the treatment of transgender prisoners and a universal recommendation to improve treatment” in *Law & Sexuality: Rev. Lesbian, Gay, Bisexual & Transgender Legal Issues* 15, 2006: 91.

129 “New non-binary prison in Scotland?” in *CorporateWatch.org*. 17 January 2018. Available at <https://corporatewatch.org/new-non-binary-prison-in-scotland/>

130 “UK to open first transgender prison wing” in *ABC.net*. 5 March 2019. Available at <https://www.abc.net.au/news/2019-03-05/uk-to-open-first-transgender-prison-unit/10866682>

131 Association for the Prevention of Torture. *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*. Geneva, Switzerland. 2018.

132 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.

Housing transgender women in women's prisons

Questions about housing transgender women in women's prisons are raised systematically in relevant literature. Fortunately, the literature also provides clear answers and guidance on this issue. A common concern raised in the literature is that a transgender woman with male genitalia in a women's prison is considered risky, given the potential for sexual intercourse with or rape of other women prisoners.¹³³ However, good practices from several countries indicate otherwise.

In Malta, transgender women prisoners are allocated to a female establishment in line with their legally recognized gender.¹³⁴ Transgender women prisoners should not be automatically regarded as posing a risk of committing sexual offences against other prisoners and should not be subject to any automatic restrictions of their association with other prisoners.¹³⁵

In Scotland (UK), transgender women prisoners are allocated to a women's establishment, irrespective of genitalia.¹³⁶ Transgender women prisoners should not be automatically regarded as posing a high risk of committing sexual offences against other people in custody and should not be subject to any automatic restrictions of her association with other people in custody.¹³⁷

Meanwhile, the provision of sufficient hormones (for those who take them) makes the issue of sexual assault risks moot given that this is known to render male genitalia unable to function for sexual purposes.¹³⁸

Note that given the choice, some transgender women will still opt to be housed in men's prisons, so blanket policies that compel transgender women to be housed in women's prisons may not always be the best possible practice. A number of different reasons for this choice are documented in the literature, including the possibility of establishing a relationship;¹³⁹ finding sexual partners for security or for financial gain;¹⁴⁰ and to access specific rehabilitation programmes that may not be available in women's prisons.¹⁴¹ For example, reports indicate that some transgender women prefer to remain in men's prisons where they can access vocational programmes to earn money to pay for their hormones.¹⁴²

133 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

134 Correctional Services Malta. *Malta Prison Policy (August 2016)*.

135 Ibid.

136 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

137 Ibid.

138 Jenness, V. and Fenstermaker, S. "Agnes goes to prison: Gender Authenticity, Transgender Inmates in Prisons for Men, and Pursuit of "The Real Deal"" in *Gender & Society*. 2013. DOI: 10.1177/0891243213499446; Mann, R. "The treatment of transgender prisoners, not just an American problem – A comparative analysis of American, Australian, and Canadian prison policies concerning the treatment of transgender prisoners and a universal recommendation to improve treatment" in *Law & Sexuality: Rev. Lesbian, Gay, Bisexual & Transgender Legal Issues* 15, 2006: 91; National Center for Transgender Equality. *Policies to increase safety and respect for transgender prisoners: A guide for agencies and advocates*. Washington DC, USA. October 2018.

139 Jenness, V. and Fenstermaker, S. "Agnes goes to prison: Gender Authenticity, Transgender Inmates in Prisons for Men, and Pursuit of "The Real Deal"" in *Gender & Society*. 2013. DOI: 10.1177/0891243213499446.

140 Saibouyaji, A. *The Assessment on the Current Management of Transgender Inmates in Selected Thai Prisons*. United Nations Development Programme. 10 October 2017.

141 Mann, R. "The treatment of transgender prisoners, not just an American problem – A comparative analysis of American, Australian, and Canadian prison policies concerning the treatment of transgender prisoners and a universal recommendation to improve treatment" in *Law & Sexuality: Rev. Lesbian, Gay, Bisexual & Transgender Legal Issues* 15, 2006: 91.

142 Ibid.

Housing transgender men in women's prisons

In contrast, there seems to be overwhelming consensus across the operational and academic literature that housing transgender men in women's prisons is a good practice that poses little to no risk. However, transgender men who prefer to be housed in facilities for men often need to have official legal gender recognition documents.

In Malta, transgender men are housed in a men's facility, in line with the gender recorded in their official documents.¹⁴³ In Scotland (UK), transgender men who have not completed gender-affirming surgery are housed in a facility for men.¹⁴⁴ In England and Wales (UK), transgender men with a gender recognition certificate may not be refused housing in a men's facility.¹⁴⁵

143 Correctional Services Malta. *Malta Prison Policy* (August 2016).

144 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

145 Ministry of Justice. *The Care and Management of Transgender Offenders*. July 2011.

Making decisions related to the housing of transgender prisoners will challenge the dominant cisnormative paradigm upon which prison management has been grounded for several decades. Multiple policies and different practices are currently being implemented in a wide variety of jurisdictions across the globe, showing different approaches: blanket policies versus case-by-case policies; general population housing versus segregation; protective custody versus dedicated units; single occupancy units versus shared cells; and based on sex assigned at birth and genitals versus gender identity; on pre-operative versus post-operative status; and on legal gender recognition.

Ultimately, good practices will be those that allow transgender prisoners to participate in the decision regarding their housing in prisons, where they have a choice in the selection of the best possible housing options, and where they are systematically informed about the final outcomes related to their housing. International guidelines published by UN agencies acknowledge that these components are critical to effective prison management:

*An essential principle of classification and allocation should be to house LGBT prisoners in whichever environment will best ensure their safety, while endeavouring to avoid segregation or isolation to the maximum possible extent unless the prisoners themselves request it. In the allocation of such prisoners, their wishes and concerns should be taken into account as far as possible, especially in the cases of transgender prisoners.*¹⁴⁶

*An essential principle of classification and allocation should be to house LGBT prisoners in whichever environment will best ensure their safety. The allocation of transgender prisoners can only be done in consultation with the prisoner concerned on a case-by-case basis.*¹⁴⁷

Body searches

Searches, especially strip searches, even when conducted in a professional manner, can be unpleasant, humiliating, and, in many cases, traumatic experiences for any prisoner, regardless of the gender of the person conducting the search.¹⁴⁸ Therefore, international guidelines recommend that frequent and unnecessary strip searches of transgender prisoners should be prohibited and records kept of the number of times each prisoner is searched in order to identify any discrimination.¹⁴⁹ More specifically, the Mandela Rules and the Bangkok Rules provide detailed guidelines related to personal searches for all prisoners, recommending that searches not be used to harass or intrude upon a prisoner's privacy, and intrusive searches be undertaken only if absolutely necessary and be conducted by trained staff of the same sex as the prisoner.¹⁵⁰ Good practices are those where transgender prisoners are given a choice regarding the gender of the person conducting the search, to ensure that the search is conducted by a person of the appropriate gender, with minimum interference, while respecting personal dignity.¹⁵¹

In Argentina, national guidelines stipulate that alternatives to body searches should first be sought and, when strip searches of prisoners are justified, prison staff should check their clothing and belongings only, letting medical staff conduct the body search itself.¹⁵² The guidelines also indicate that prison staff are not allowed to have physical, verbal or visual contact with the person being examined by the health care staff.¹⁵³

In New South Wales (Australia), transgender prisoners must be asked their preference regarding the gender of the officer conducting strip and pat search procedures.¹⁵⁴ Strip and pat searching of transgender prisoners is then to be conducted by an officer of the prisoner's preferred gender, except in emergency situations.¹⁵⁵ However, where an officer is not comfortable with this directive, another officer (of the preferred gender) should be assigned the task.¹⁵⁶ In ACT (Australia), prison officers of the same gender to which the transgender prisoner identifies will carry out any searches and conduct urinalysis.¹⁵⁷

In Ontario (Canada), transgender prisoners must be given the choice between male or female staff when conducting frisk and strip searches, urinalysis testing, and camera surveillance.¹⁵⁸ When transgender prisoners choose to have a male and female corrections officer involved in the search,

148 Aguirre, I. Y. et al. *Prisons and Health*. World Health Organization, Regional Office for Europe. Copenhagen, Denmark. 2014.

149 Atabay, T. *Handbook on prisoners with special needs*. United Nations Office on Drugs and Crime. Vienna, Austria. 2009.

150 United Nations Office on Drugs and Crime. *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. Vienna, Austria. 2015; United Nations General Assembly. *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*. United Nations Office on Drugs and Crime. Vienna, Austria. 16 March 2011.

151 Atabay, T. *Handbook on prisoners with special needs*. United Nations Office on Drugs and Crime. Vienna, Austria. 2009.

152 Association for the Prevention of Torture. *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*. Geneva, Switzerland. 2018.

153 Ibid.

154 Government of New South Wales. *Custodial operations policy and procedures*.

155 Ibid.

156 Ibid.

157 Government of Australia. *Corrections Management (Reception and Management of Transgender Prisoners) Policy 2007*. Canberra, Australia. 2007.

158 Roche, K. "Big Changes for Transgender Inmates in Canada's Federal Prisons" in *Insauga*. 15 February 2018. Available at <https://www.insauga.com/big-changes-for-transgender-inmates-in-canadas-federal-prisons>

the inmate must be provided the choice of which body parts are searched by whom.¹⁵⁹ Transgender prisoners will be offered privacy for the duration of the search, including any search of prosthetics.¹⁶⁰ During the search, staff will exercise sensitivity and provide explanations and an opportunity for prisoners to ask questions.¹⁶¹

In Colombia, the General Regulation on Correctional Establishments stipulates that transgender prisoners should be asked on a case-by-case basis whether they prefer to be searched by a male or a female officer.¹⁶² The Regulation also includes provisions for transgender visitors, whereby body searches are to be conducted on the basis of the visitors' self-declared gender, independently of the information provided on their identification document.¹⁶³ In case of any doubt, the visitor has to be asked their preference between male and female officers.¹⁶⁴

In Ireland, the Prison Rules explicitly stipulate that searches will not be undertaken by a prison officer who is not of the same gender as the prisoner being searched.¹⁶⁵ In England and Wales (UK), transgender prisoners who have applied for or have obtained legal recognition of the gender with which they identify must be searched in accordance with their legal gender, unless alternative arrangements are agreed in consultation with the transgender prisoner.¹⁶⁶

In Malta, rubdowns and body searches should be conducted in accordance with a prisoner's gender identity; genitalia must never be used to determine the gender of the prison officer who will conduct the search.¹⁶⁷ If a transgender prisoner has recently undergone gender-affirming surgery or has ongoing physical complications from such surgery, then specialist medical guidance is sought on how to avoid harm to the prisoner during a search.¹⁶⁸ During a body search, transgender prisoners are sensitively invited to remove any prosthetics in order to enable examination of the skin; prosthetics are then searched to ensure they have not been tampered with, although care is exercised to avoid accidental damage.¹⁶⁹ The items are returned immediately once they have been searched.¹⁷⁰ Sufficient time is provided for the prisoner to replace the items and a mirror provided if required.¹⁷¹ Searches on transgender prisoners may be monitored by a supervisor, ideally of the same gender.¹⁷²

159 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.

160 Ibid.

161 Ibid.

162 Association for the Prevention of Torture. *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*. Geneva, Switzerland. 2018.

163 Ibid.

164 Ibid.

165 Carr, N., McAlister, S. and Serisier, T. *Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison*. Irish Penal Reform Trust. Dublin, Ireland. February 2016.

166 Ministry of Justice. *Review on the Care and Management of Transgender Offenders*. London, United Kingdom. November 2016.

167 Correctional Services Malta. *Malta Prison Policy (August 2016)*.

168 Ibid.

169 Ibid.

170 Ibid.

171 Ibid.

172 Ibid.

In New Zealand, transgender prisoners are invited to choose the preferred gender of prison officers to conduct searches.¹⁷³ That choice is officially recorded in the prisoner's file and followed consistently until such a time as the prisoner requests a change.¹⁷⁴ However, the prisoner may not choose the individual conducting the search, only the preferred gender.¹⁷⁵ Prisoners wearing prosthetics are respectfully requested to remove them so as to allow examination of the skin; prosthetics are immediately searched.¹⁷⁶ Prison guards then provide sufficient time and privacy for transgender prisoners to replace the items.¹⁷⁷

In Scotland (UK), body searches are conducted in accordance with a transgender prisoner's gender identity.¹⁷⁸ Genitalia should never be used to determine the gender of the prison officer who will conduct the search.¹⁷⁹ During the body search process, transgender prisoners are sensitively asked to remove any items such as prosthetics, wigs or chest binders to enable the skin underneath to be examined.¹⁸⁰ The items removed are searched, although care is exercised to avoid accidental damage.¹⁸¹ The items are returned immediately once they have been searched.¹⁸² Sufficient time is provided for the person in custody to replace the items and a mirror provided if required.¹⁸³

In the United States, three options are currently practised in the context of searches of transgender prisoners: 1) searches conducted only by medical staff; 2) searches conducted by female staff only; and 3) asking the prisoner to identify their preference regarding the gender of the staff who will be conducting the search.¹⁸⁴ Ideally, all strip searches of transgender prisoners will occur in a dignified manner that provides the individual with privacy from other prisoners and staff members.¹⁸⁵

In federal prisons in the United States, transgender prisoners are pat-searched in accordance with the gender of the institution or housing assignment in which they are detained, although transgender prisoners may request an exception that must be pre-authorized by prison authorities.¹⁸⁶ For purposes of a visual search, transgender prisoners are searched in accordance with the gender of the institution or housing assignment in which they are detained.¹⁸⁷ Visual searches are conducted in a manner designed to ensure as much privacy to the prisoner as practicable.¹⁸⁸ Transgender

173 Department of Corrections (New Zealand). *Prison Operations Manual*.

174 Ibid.

175 Ibid.

176 Ibid.

177 Ibid.

178 Carr, N., McAlister, S. and Serisier, T. *Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison*. Irish Penal Reform Trust. Dublin, Ireland. February 2016.

179 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

180 Ibid.

181 Ibid.

182 Ibid.

183 Ibid.

184 Prison Law Office. *Common Issues Facing Transgender Prisoners*. December 2016.

185 Transgender Law Center. *Policy Recommendations Regarding LGBT People in California Prisons*. San Francisco, USA.

186 US Department of Justice. *Transgender Offender Manual*. 11 May 2018.

187 Ibid.

188 Ibid.

prisoners may also request an exception to be visually searched by a staff member of the prisoners' gender identity.¹⁸⁹

In Santa Clara County, California (USA), transgender prisoners are required to be searched by an officer of the same gender, and all searches conducted on transgender prisoners are overseen by a supervisor of the same gender.¹⁹⁰ In Harris County, Texas (USA), transgender prisoners are asked to indicate their preference in regards to the gender of the officer that will perform a pat-down search.¹⁹¹

Ultimately, good practices for conducting body searches of transgender prisoners requires the active engagement of the prisoner in making the selection of the gender of the officers who will be conducting the search. In some cases, prison workers may express discomfort with conducting searches of transgender prisoners. It's important for officers to understand that these procedures are adopted to prevent abuse or unnecessary trauma to prisoners. In order to help prison workers conduct searches of transgender prisoners in the most respectful and professional manner possible, training on appropriate methods for conducting searches should be provided to all of those who may be conducting both pat searches and strip searches. Additionally, good practices are those that are conducted with respect and dignity, and are sensitive to the need for privacy.

Access to showers and bathrooms

International guidelines recommend that access to shower and bathroom facilities for transgender prisoners take into account their gender identity, physical status, dignity and personal safety.¹⁹² Good practices are those that preserve the privacy of transgender prisoners in the context of accessing bathrooms and showers. However, due to overcrowding in many prison facilities across the world, respecting the privacy of transgender prisoners may not always be possible. Out of the 13 countries systematically analysed in this report, only 3 report a level of occupancy below their maximum capacity, while 2 – Brazil and Thailand – stand out as significantly overcrowded, as indicated in Table 4 as follows.





189 Ibid.

190 County of Santa Clara. *Policy and Procedure Manual: Custody Policy 14.17 – Inmate Rights, LGBTQI Inmates*. 11 January 2018.

191 National Center for Transgender Equality. *Policies to increase safety and respect for transgender prisoners: A guide for agencies and advocates*. Washington DC, USA. October 2018.

192 Weber-Main, A. M. *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*. World Professional Association for Transgender Health. 2011.

Table 4: Level of prison overcrowding per country¹⁹³

	 Total number of prisons ¹	 Total number of prisoners ²	 Capacity ¹	 Overcrowding ¹
Argentina	301	81,975	74,030	115.2%
Australia	111	42,942	36,730	112.2%
Brazil	2,625	690,722	418,895	167.6%
Canada	216	41,145	38,771	102.2%
England and Wales (UK)	118	83,014	74,785	110.4%
Ireland	13	3,816	4,244	94.6%
Italy	207	59,135	50,528	119.7%
Malta	1	588	617	102.9%
Netherland	54	10,464	14,419	72.6%
New Zealand	18	10,435	8,393	106.1%
Scotland	15	7,771	7,918	92.9%
Thailand	144	364,288	217,000	144.8%
USA	4,455	2,121,600	2,140,321	103.9%

¹ Institute for Criminal Policy Research. World Prison Brief. Available at <https://www.prisonstudies.org/world-prison-brief-data>

² For England and Wales (UK): Walmsley, R. World prison population list – 12th edition. Institute for Criminal Policy Research. 2018.

Nevertheless, good practices have been documented in some countries and jurisdictions. For example, in ACT (Australia), all prisoners, including transgender prisoners, have access to bathroom facilities that are private enough to ensure dignity and self-respect, although transgender prisoners are specifically placed in single cell accommodation, or with other transgender prisoners.¹⁹⁴ In Western Australia (Australia), transgender prisoners are placed in a single cell with separate bathroom facilities.¹⁹⁵ In Queensland (Australia), transgender prisoners have access to shower and toilet facilities

¹⁹³ Data reported originate from the two sources indicated immediately below the table. All data presented were published between 2014 and 2019.

¹⁹⁴ Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

¹⁹⁵ Ibid.

that offer privacy and dignity.¹⁹⁶ Similarly, in Ontario (Canada), transgender prisoners are offered individual and private access to showers and toilets in order to ensure safety and safeguard privacy.¹⁹⁷

In Malta, the safety and enhanced privacy requirements of transgender prisoners are taken into account for them to access showers, sometimes implying scheduled access to facilities to separate them from other prisoners.¹⁹⁸ In Scotland (UK), the safety and possible enhanced privacy requirements of transgender prisoners are also taken into account for them to access showers.¹⁹⁹

In England and Wales (UK), transgender prisoners are entitled to shower alone.²⁰⁰ If prisons are unable to provide en suite showering or bathing facilities, as much privacy as possible will be facilitated by the following means: no other prisoner will be allowed to use the shower, to ensure privacy and decency; transgender prisoners are responsible for ensuring that the shower curtain or bathroom door is closed, to ensure privacy and decency; transgender prisoners must be fully and appropriately dressed when walking to and from the shower area; and transgender prisoners must not use or attempt to use the shower facilities outside the specified times.²⁰¹

In the United States, national policies require that modesty screens be placed strategically in areas that prevent incidental viewing of breasts, buttocks and genitalia, when placing screens does not impact safety and security.²⁰² The Prison Rape Elimination Act of 2003 also dictates that transgender prisoners are allowed the opportunity to shower separately from other prisoners.²⁰³ In Santa Clara County, California (USA), transgender prisoners are given the opportunity to shower separately from other prisoners.²⁰⁴ In Kentucky (USA), transgender prisoners are given the opportunity to shower privately from other prisoners and are afforded as much privacy as possible without jeopardizing safety and security.²⁰⁵

Ultimately, good practices in terms of facilitating access to showers and bathrooms must balance the need for supplementary privacy compared to other prisoners, while ensuring the safety and security of transgender prisoners, other prisoners and prison staff. Where it is not possible to provide dedicated, private or separate facilities, prison management should put in place physical barriers to maximize privacy, without compromising safety and security.

196 Ibid.

197 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.

198 Correctional Services Malta. *Malta Prison Policy (August 2016)*.

199 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

200 Hymas, C. "One in 50 prisoners identifies as transgender amid concerns inmates are attempting to secure prison perks" in *The Telegraph*. 7 September 2019. Available at <https://www.telegraph.co.uk/news/2019/07/09/one-50-prisoners-identify-transsexual-first-figures-show-amid/>

201 Ministry of Justice. *The Care and Management of Transgender Offenders*. July 2011.

202 Prison Law Office. *Common Issues Facing Transgender Prisoners*. December 2016.

203 Ibid.

204 County of Santa Clara. *Policy and Procedure Manual: Custody Policy 14.17 – Inmate Rights, LGBTQI Inmates*. 11 January 2018.

205 National Center for Transgender Equality. *Policies to increase safety and respect for transgender prisoners: A guide for agencies and advocates*. Washington DC, USA. October 2018.

Confidentiality

Confidentiality refers to the need to keep certain information as private as possible. The Mandela Rules and the Bangkok Rules enshrine this principle, promoting the confidentiality of medical and gender-related personal information for prisoners.²⁰⁶ This is especially important for transgender prisoners whose personal and medical information can fuel discrimination and violence, thereby disrupting prison management. A number of countries and jurisdictions have established good practices in terms of information management by limiting dissemination and access to transgender prisoners' personal and medical information to only those individuals who absolutely need that information to work effectively, thereby maintaining privacy and confidentiality as much as possible.

In Ontario (Canada), prison policies stipulate that steps are taken to maximize the privacy and confidentiality of any information related to transgender prisoners' gender identity or transition history.²⁰⁷ Information about prisoners' gender identity or transition history can only be shared with those directly involved with prisoner care, and only when relevant.²⁰⁸ Any conversations and consultations amongst staff must occur privately, out of hearing range of other prisoners or anyone else that is not specifically designated to the prisoner's care.²⁰⁹

Similarly, in Scotland (UK), information about prisoners' gender transition is handled very carefully and in full compliance with data protection and medical confidentiality standards, given that such information is highly sensitive and carries serious potential safety and security consequences.²¹⁰ Specifically, prison staff must not reveal information about a prisoner's gender transition to other people.²¹¹ Information about a prisoner's gender transition is only shared with other staff without the prisoner's permission where this is essential to manage the risk of crime.²¹² Furthermore, those who disclose gender transition information without the prisoner's permission are liable to criminal prosecution.²¹³

In the United States, sexual orientation and gender identity is considered to be private information, where the dissemination of this information could impact the safety and well-being of transgender prisoners.²¹⁴ Therefore, such information is considered sensitive, so confidentiality should be maintained, and the information only communicated to staff when there is a formal justification.²¹⁵

206 United Nations Office on Drugs and Crime. *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. Vienna, Austria. 2015; United Nations General Assembly. *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*. United Nations Office on Drugs and Crime. Vienna, Austria. 16 March 2011.

207 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.

208 Roche, K. "Big Changes for Transgender Inmates in Canada's Federal Prisons" in *Insauga*. 15 February 2018. Available at <https://www.insauga.com/big-changes-for-transgender-inmates-in-canadas-federal-prisons>

209 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.

210 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

211 Ibid.

212 Ibid.

213 Ibid.

214 Prison Law Office. *Common Issues Facing Transgender Prisoners*. December 2016.

215 Ibid.

As a matter of safety and security, such information is never communicated to other prisoners.²¹⁶ For example, in Harris County, Texas (USA), controls and safeguards on the dissemination of information (including electronic data) are in place within prison facilities and with regards to media in response to questions asked, in order to ensure that staff, other prisoners or the media, do not exploit sensitive information.²¹⁷

Good practices therefore require efforts on the part of prison management to limit access to and control the dissemination of personal and health information related to transgender prisoners. Policies should explicitly refer to prisoners' right to privacy, and safeguards and controls should be deployed to enforce this policy. However, some transgender prisoners may have their gender status revealed unavoidably simply because of where they are housed (for example, as a woman in a men's facility).²¹⁸ However, even in such cases, prison management must still protect the individual's privacy to the extent possible, such as with regards to the specifics of a prisoner's medical history.²¹⁹

Access to clothes and personal commodities

There are no international guidelines reviewed in the preparation of this report that present recommendations relating to transgender prisoners' access to clothes, grooming and personal commodities. However, the Mandela Rule #19 specifically requires that "Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating."²²⁰

In general, prisons will have an internal dispensary from which prisoners can freely purchase approved items with their own money. Generally, dispensaries offer a catalogue of available items, but those are very often gendered, preventing male prisoners from purchasing commodities earmarked for women, and vice versa. Good practices are those that offer a gender-neutral catalogue where any prisoner can purchase the approved commodities, irrespective of gender. Where such gender-neutral catalogues are not available, an alternative can be implemented by allowing transgender prisoners to purchase commodities approved for both men and women.

Furthermore, good practices also allow transgender prisoners to dress in clothes that align with their gender identity. This is obviously only possible in facilities that allow prisoners to wear civilian clothing and that do not require prisoners to wear a uniform. However, where prisoner uniforms are required, transgender prisoners should be allowed to choose the uniform that they feel is most appropriate. Wearing the uniform that corresponds with a prisoner's gender identity may increase safety and security risks, for example in a male prison where a transgender woman wears a female uniform.

216 Ibid.

217 National Center for Transgender Equality. *Policies to increase safety and respect for transgender prisoners: A guide for agencies and advocates*. Washington DC, USA. October 2018.

218 Ibid.

219 Ibid.

220 United Nations Office on Drugs and Crime. *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. Vienna, Austria. 2015.

For example, in New South Wales (Australia), transgender prisoners are allowed to dress at all times in clothing appropriate to their gender identity, including those housed in prisons of their sex assigned at birth.²²¹ Clothing and underwear appropriate to their gender identity is available to transgender prisoners, and they are allowed to purchase the same personal care items, cosmetics, clothing and underwear through the buy-up system as other prisoners who share the same gender identity.²²² In contrast, in Victoria (Australia), all prisoners, including transgender prisoners, are required to wear standard prison issue clothing, but transgender prisoners have access to underwear appropriate to their gender.²²³

In Ontario (Canada), transgender prisoners must be provided with their preferred institutional clothing and underclothing while in custody and for court appearances and release.²²⁴ Transgender prisoners are allowed to retain personal items, including prosthetics, necessary to express their gender identity, both in the institution and while being transferred, unless it can be proven that there are overriding health and safety concerns present which cannot be mitigated.²²⁵ Furthermore, prison policies allow transgender prisoners to purchase authorized items from dispensary catalogues for either men or women if there are no safety, health or security concerns.²²⁶

In Italy, transgender women who are incarcerated and housed in protective custody are allowed to wear female clothing.²²⁷

In Malta, prison authorities do not classify clothes by gender, and hence all prisoners have access to any commodity,²²⁸ as long as such items are permitted in accordance with the prison regulations.²²⁹ Furthermore, transgender prisoners may require access to items which may not be traditionally associated with their gender identity or readily available in the facility where they are housed; the Maltese prison policy recommends that suitable access to such items or services which are necessary to support gender identity be provided to all transgender prisoners, regardless of the facility in which they are currently housed.²³⁰ Access to such gender-specific or additional commodities is not considered 'special' treatment; it is more appropriately viewed as a form of reasonable accommodation and/or as medical equipment.²³¹ Access to additional gendered commodities is guaranteed to prisoners regardless of their legal gender identity.²³²

221 Government of New South Wales. *Custodial operations policy and procedures*.

222 Ibid.

223 Lynch, S. and Bartels, L. "Transgender prisoners in Australia: an examination of the issues, law and policy" in *Flinders Law Journal* (19). 2017: 185.

224 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.

225 Ibid.

226 Roche, K. "Big Changes for Transgender Inmates in Canada's Federal Prisons" in *Insauga*. 15 February 2018. Available at <https://www.insauga.com/big-changes-for-transgender-inmates-in-canadas-federal-prisons>

227 Hochdorn, A., Faleiros, V., Valerio, P. and Vitelli, R. "Narratives of Transgender People Detained in Prison" in *Frontiers in Psychology*. January 2018.

228 According to the Malta Prison Policy, commodities could include clothing (including underwear) in accordance with the inmate's gender identity; sanitary wear; shaving equipment and cream; hair removal cream; cosmetics; binders for breasts; prosthetics such as breast or genital forms (subject to prescription by a professional officer); and vaginal dilators (subject to prescription by a professional officer).

229 Correctional Services Malta. *Malta Prison Policy (August 2016)*.

230 Ibid.

231 Ibid.

232 Ibid.

In New Zealand, all approved commodities can be purchased by transgender prisoners, and any other items used to maintain their gender identity may be issued by following regular protocols.²³³ Prison policies and guidelines prohibit the confiscation of commodities used by transgender prisoners to maintain their gender identity, unless the prison authorities explicitly determine that such items pose a risk to the safety and security of the prison.²³⁴

In Scotland (UK), transgender prisoners are allowed access to items such as clothing, prosthetics, chest binders, hair pieces/wigs and other equipment needed to express their gender identity.²³⁵ Access to such commodities is not considered 'special' treatment; it is more appropriately viewed as a form of reasonable accommodation and/or as medical equipment.²³⁶ Where transgender prisoners request access to specialized equipment to facilitate their gender transition, and health care staff agree the equipment is needed, then reasonable steps are taken to arrange prompt access to the requested commodities.²³⁷

In England and Wales (UK), permitting transgender prisoners to express their gender identity includes allowing prisoners to dress in clothes appropriate to that identity.²³⁸ Furthermore, prison authorities allow transgender prisoners to access items used to maintain their gender identity, at all times and regardless of any disciplinary punishment being served.²³⁹ Access to necessary items, such as gender-appropriate clothing and make-up, is not considered a privilege and those items cannot be confiscated as a form of punishment.²⁴⁰

In federal prisons in the United States, national prison policies allow transgender prisoners, upon request, to be provided with state-issued brassieres or boxer shorts via the institution clothing room and permitted to purchase such items as needed.²⁴¹ Additionally, transgender prisoners in federal prisons have access to additional gendered items²⁴² through the prison dispensary.²⁴³ In California (USA), transgender women detained in men's prisons have access to gendered commodities like nightgowns, scarves and necklaces.²⁴⁴ In Santa Clara County, California (USA), transgender prisoners have access to toiletries (e.g. make-up, face cream, cleansers and sanitary supplies), as well as clothes (including undergarments) appropriate to their gender identity.²⁴⁵ In Pennsylvania (USA), the dispensary list makes a variety of undergarments, cosmetics and other personal care items available in both male and female facilities.²⁴⁶

233 Department of Corrections (New Zealand). *Prison Operations Manual*.

234 Ibid.

235 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

236 Ibid.

237 Ibid.

238 Ministry of Justice. *The Care and Management of Transgender Offenders*. July 2011.

239 Ibid.

240 Lambie, S. "Rethinking gendered prison policies – Impacts on transgender prisoners" in *ECAN Bulletin*. University of London. 16. August 2012.

241 Prison Law Office. *Common Issues Facing Transgender Prisoners*. December 2016.

242 Including pyjamas, nightgowns, robes, t-shirts, scarves, chains/necklaces, walking shoes, sandals in women's institutions, and pumice stones, emery boards and curling irons in men's institutions.

243 Prison Law Office. *Common Issues Facing Transgender Prisoners*. December 2016.

244 Associated Press. "California Is First to Pay for Prisoner's Sex-Reassignment Surgery" in *The New York Times*. 7 January 2017. Available at <https://www.nytimes.com/2017/01/07/us/california-is-first-to-pay-for-prisoners-sex-reassignment-surgery.html>

245 County of Santa Clara. *Policy and Procedure Manual: Custody Policy 14.17 – Inmate Rights, LGBTQI Inmates*. 11 January 2018.

246 Ibid.

Gender-neutral access to clothes and commodities is more straightforward and easier to manage than having a policy that requires prison authorities to approve and verify each and every special exception for transgender prisoners.²⁴⁷ This approach also reduces barriers for prisoners to access the clothing and grooming items they need, regardless of whether they are housed in a men's or a women's facility, and whether they've received prior approval for those items.²⁴⁸ A gender-neutral approach makes access easier for transgender prisoners who may need access to items associated with both genders in order to protect their safety, maintain their hygiene or to present in a manner consistent with their gender identity.²⁴⁹ A gender-neutral dispensary catalogue also allows prisoners who have not been formally identified as transgender, including non-transgender people who do not conform to gender stereotypes, to access a range of clothing and grooming items appropriate for their needs.²⁵⁰

Overall, good practices are those that facilitate access to clothes and personal commodities in order to allow transgender prisoners to express their gender identity. Such approaches have been found to reduce the likelihood of prisoner harassment and humiliation,²⁵¹ while improving overall prison management by improving the general well-being and functioning of transgender prisoners.²⁵²

Access to health services

The aim of universal health coverage is to ensure that everyone has access to the quality health services they need without suffering financial hardship owing to the cost of paying for those services.²⁵³ Universal health coverage should include quality essential health services – covering health promotion, prevention, treatment, rehabilitation and palliative care – through a clearly defined health benefits package. One of the core principles of universal health coverage is to facilitate access to health care especially for people who are vulnerable and marginalized, like prisoners.²⁵⁴

The World Health Organization promotes the principle of equivalence, recommending that, at minimum, access to health services and standards of care in prisons and other closed settings mirror those available in the community.²⁵⁵ However, equivalence may not represent the best possible practice, given that prison populations are generally more vulnerable and are subject to higher prevalence of illness and ill health compared to people in the community.²⁵⁶ In that sense, best practices in terms of health management in prison and other closed settings should strive to surpass the availability and quality of health care delivered in community settings.²⁵⁷ In Australia, for example, national prison standards demand that health care services for transgender prisoners be appropriate to meet their needs, where accessibility and quality of such services should be equal

247 Ibid.

248 Ibid.

249 Ibid.

250 Ibid.

251 Transgender Law Center. *Policy Recommendations Regarding LGBT People in California Prisons*. San Francisco, USA.

252 Arkles, G. "Safety and solidarity across gender lines: Rethinking segregation of transgender people in detention" in *Temple Political & Civil Rights Law Review*, 18:2. 2009.

253 World Health Organization. *Together on the road to universal health coverage: A call to action*. Geneva, Switzerland. 2017.

254 Joint United Nations Programme on HIV/AIDS. *HIV and universal health coverage: A guide for civil society*. Geneva, Switzerland. 2019.

255 Aguirre, I. Y. et al. *Prisons and Health*. World Health Organization, Regional Office for Europe. Copenhagen, Denmark. 2014.

256 Ibid.

257 Lines, R. "From equivalence of standards to equivalence of objectives: the entitlement of prisoners to health care standards higher than those outside prisons" in *International Journal of Prisoner Health*, 2(4), 2006: 269–280.

to those available in the community.²⁵⁸ Similarly, in England and Wales (UK), transgender prisoners must receive the same quality of health care they would expect to receive from the National Health Service if they were not imprisoned.²⁵⁹

However, few institutions actually achieve equivalence, and fewer still offer better quality of care in prison settings compared to community settings. Given that prison management is generally under the management of interior or justice ministries, health authorities have limited influence on service delivery in closed settings.²⁶⁰ Thus, many prisons struggle to make available timely or appropriate health care provision, which is generally less efficient than community-based health services.²⁶¹ This often leads to compromised continuation of medical care when people enter prisons, when they are transferred between prisons and when they leave prisons.²⁶²

Despite those limitations, prison management should actively recognize, through effective policy and positive action, that transgender prisoners are often more vulnerable compared to other prisoners.²⁶³ Some key issues, such as HIV care, treatment for anxiety and post-traumatic stress, treatment following allegations of abuse, and patient confidentiality are particularly important issues for transgender prisoners. For instance, they may have additional needs with regard to primary care, including routine preventive screenings, which may not be typical for people of the gender with which they are housed.

Prison management may lack the practical expertise or capacity to effectively deliver equivalent care services to transgender prisoners. In such cases, good practices require that prison authorities mobilize the required expertise from external professionals in the community in order to meet transgender prisoners' health needs.²⁶⁴ Furthermore, good practice in managing the health and well-being of transgender prisoners will also include close collaboration with community-based organizations working with transgender communities in order to assist with the health care of these prisoners and support the effective delivery of medical interventions.²⁶⁵ Note that the mobilization of external medical experts and community organizations is an approach that should cut across all health-related issues covered in this report as a general principle.

258 Government of Australia. *Guiding Principles for Corrections in Australia, Revised*. Canberra, Australia. 2018.

259 Cassaidy, M. and Lim, L. *The Rights of Transgender People in Prisons*. Equal Justice Project. Auckland, New Zealand. 11 May 2016.

260 Pont, J. and Harding, T. W. *Organization and management of health care in prison*. Council of Europe. February 2019.

261 Penal Reform International. *Health in prisons: Realising the right to health*. 2007.

262 Pont, J. and Harding, T. W. *Organization and management of health care in prison*. Council of Europe. February 2019.

263 Heard, C. *Towards a health-informed approach to penal reform? Evidence from ten countries*. Institute for Criminal Policy Research. 2019.

264 Association for the Prevention of Torture. *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*. Geneva, Switzerland. 2018.

265 Aguirre, I. Y. et al. *Prisons and Health*. World Health Organization, Regional Office for Europe. Copenhagen, Denmark. 2014.

Meanwhile, transgender prisoners often have medical needs specific to their gender identity. For example, gender incongruence – a condition marked by persistent incongruence between an individual's experienced gender and their assigned sex, which often leads to a desire to 'transition', in order to make the individual's body align, as much as desired and to the extent possible, with the experienced gender²⁶⁶ – remains a recognized medical condition that requires prison authorities to provide appropriate medical care and support; failure to do so could be argued to breach basic human rights standards.²⁶⁷ For example, in England and Wales (UK), prison authorities are compelled to provide transgender prisoners who have been diagnosed with gender incongruence with health services – such as counselling, pre-operative and post-operative care, and access to hormone treatment – regularly available through the National Health Service.²⁶⁸ In the United States, denying transgender prisoners access to transition-related health care violates their Eighth Amendment rights.²⁶⁹

The official prison policy in Malta is explicit in this regard:

*The fact of a trans . . . person's imprisonment, and the vulnerable situation in which that places them, means that every effort should be made by Correctional Services to ensure access to the required/ requested medical treatment that assists the inmates in aligning their physical characteristics with their gender identity. Whenever an inmate requests such specialist assistance, the necessary arrangements to facilitate this should be undertaken promptly . . . Access to trans, gender variant and/or intersex healthcare services should be guaranteed to inmates regardless of their legal gender identity.*²⁷⁰

Addressing gender incongruence can involve interventions such as hormone therapy, counselling, social gender role transition (such as changing one's name, clothing or grooming) and a variety of possible surgical interventions.

Access to hormones

Hormone therapy is considered as the main medical intervention recommended to address gender incongruence.²⁷¹ International guidelines indicate that transgender individuals who have started a hormone treatment regimen prior to entering correctional facilities should be supported to continue on the same or similar therapies and monitored accordingly.²⁷² Similarly, people diagnosed with gender incongruence who are eligible for and want to initiate hormone therapy should receive the support to do so, even in prisons and closed settings.²⁷³ The World Health Organization also recommends that transgender prisoners diagnosed with gender incongruence should have access

266 World Health Organization. *International classification of diseases for mortality and morbidity statistics* (11th Revision). 2018.

267 Blight, J. *Transgender Inmates*. Australian Institute of Criminology. Canberra, Australia. 2000.

268 Ministry of Justice. *The Care and Management of Transgender Offenders*. July 2011.

269 Hlavinka, E. "Trans Inmates and Healthcare: What Is Best Practice?" in *MedPathology.com*. Austin, USA. 29 October 2018. Available at <https://www.medpagetoday.com/meetingcoverage/aapl/76007>

270 Correctional Services Malta. *Malta Prison Policy (August 2016)*.

271 "Growing recognition of transgender health" in *Bulletin of the World Health Organization*, 94, 2016: 790–791. doi: <http://dx.doi.org/10.2471/BLT.16.021116>.

272 Weber-Main, A. M. *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*. World Professional Association for Transgender Health. 2011.

273 Ibid.

to interventions available in the community, including hormone therapy, as well as psychological support if required.²⁷⁴

However, in many countries and jurisdictions, prison authorities deny transgender prisoners access to hormone therapy or limit their access, given that, from their point of view, the correctional environment is not an appropriate one for an individual to embark on a life-changing decision such as gender transition.²⁷⁵ In countries and jurisdictions where transgender prisoners can access hormone therapy, three models dominate: a 'freeze frame' approach, where transgender prisoners who can demonstrate that they had initiated a prescribed course of hormone therapy are allowed to continue access at the same level, with no variation in dosing; a continuation approach, where transgender prisoners are allowed to continue a prescribed regimen of hormone therapy with allowances for adjustments to dosage as needed based on regular medical assessments; and an initiation approach that allows transgender prisoners to commence a prescribed course of hormone therapy while in prison, with subsequent adjustments as medically advised, in line with the continuation approach.

Hormone therapy is often costly and few jurisdictions cover the cost of such interventions, either in community or closed settings. That said, where health insurance schemes include financial support for hormone therapy, this financial support should be available in both community and closed settings.

In Australia, most states allow access to hormone therapies if transgender prisoners have started treatment prior to incarceration.²⁷⁶ However, the decision to grant access to hormones is often dependent on evaluation by prison medical services, and whether or not prisoners can afford the cost of treatment.²⁷⁷ In South Australia (Australia), hormone therapy may be initiated at the discretion of prison medical officers.²⁷⁸ In ACT (Australia), access to hormone therapy is granted on a case-by-case basis by prison authorities in consultation with prison health officials.²⁷⁹ In New South Wales (Australia), applications to start hormone therapy while in prison can be made at any time, and the therapy is provided and funded by the state.²⁸⁰ Furthermore, in order for transgender prisoners who have not been prescribed hormone therapy in the community prior to incarceration to access hormone therapy, a treatment plan must be developed collaboratively by a multidisciplinary team.²⁸¹ For transgender prisoners who have been prescribed hormone therapy in the community prior to incarceration, hormone therapy must be continued and appropriately managed in custody by health services, following a treatment plan that provides clear management guidelines including ongoing risk assessments for the prisoner and others, as well as determining appropriate psychosocial support.²⁸² However, in its 2015 report, the Australian Human Rights Commission recommended

274 Aguirre, I. Y. et al. *Prisons and Health*. World Health Organization, Regional Office for Europe. Copenhagen, Denmark. 2014.

275 Lynch, S. and Bartels, L. "Transgender prisoners in Australia: an examination of the issues, law and policy" in *Flinders Law Journal* (19). 2017: 185.

276 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017: 185.

277 Ibid.

278 Blight, J. *Transgender Inmates*. Australian Institute of Criminology. Canberra, Australia. 2000.

279 Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

280 Cassaidy, M. and Lim, L. *The Rights of Transgender People in Prisons*. Equal Justice Project. Auckland, New Zealand. 11 May 2016.

281 Government of New South Wales. *Custodial operations policy and procedures*.

282 Ibid.

that all states and territories should promptly “develop and implement policies ... for access to hormone therapy ... based on medically identified need, not discretion.”²⁸³

In Malta, any hormone therapy (such as hormone tablets, injections and topical gels) prescribed prior to incarceration is identified, recorded within the prisoner’s health care records, and access continued in the same manner as any other prescribed medication would be continued within prison.²⁸⁴ Access to hormones as part of a process of transition while in prison is done in consultation with specialized doctors in the fields of gender reassignment, endocrinology and/or surgery, applying the same principles as would be applied in relation to people in the community.²⁸⁵ In Scotland (UK), any hormone therapy (such as hormone tablets, injections and topical gels) prescribed prior to incarceration is identified, recorded within the prisoner’s health care records, and access is continued in the same manner as any other prescribed medication would be continued within prison.²⁸⁶

In Italy, transgender prisoners are allowed to continue hormone therapies that were initiated prior to incarceration.²⁸⁷ In New Zealand, transgender prisoners are not allowed to initiate hormone therapy while in prisons,²⁸⁸ although they can continue treatment, at their own expense, if the treatment was already initiated prior to incarceration.²⁸⁹

In Thailand, a petition was recently submitted to the National Human Rights Commission to facilitate access to hormone therapy for transgender prisoners.²⁹⁰

In most jurisdictions in the United States, the law does not require prisons to provide hormones to transgender prisoners.²⁹¹ Indeed, only 13 states allow for the initiation of hormone therapy while incarcerated, compared to 21 states that allow for the continuation of hormone therapy.²⁹² However, 20 states do not allow for the initiation or continuation of hormone therapy, while there are no available data on access to hormone therapy in 10 states.²⁹³ Across federal prisons, hormone therapy may be provided after an individualized assessment by medical staff to confirm a gender incongruence diagnosis,²⁹⁴ following a request from a transgender prisoner.²⁹⁵ In California (USA),

283 Lynch, S. and Bartels, L. “Transgender prisoners in Australia: an examination of the issues, law and policy” in *Flinders Law Journal* (19). 2017: 185.

284 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

285 Ibid.

286 Ibid.

287 Hochdorn, A. et al. “Narratives of Transgender People Detained in Prison: The Role Played by the Utterances ‘Not’ (as a Feeling of Hetero- and Auto-rejection) and ‘Exist’ (as a Feeling of Hetero- and Auto-acceptance) for the Construction of a Discursive Self. A Suggestion of Goals and Strategies for Psychological Counseling” in *Frontiers in Psychology*. 8, 2018: 2367.

288 Cassaidy, M. and Lim, L. *The Rights of Transgender People in Prisons*. Equal Justice Project. Auckland, New Zealand. 11 May 2016.

289 Upperton, T. J. *Time for reform: Protecting gender identity under the Human Rights Act 1993*. Victoria University of Wellington. Wellington, New Zealand. 2016.

290 “Hormone access urged for LGBT inmates” in *Bangkok Post*. 17 July 2019. Available at https://www.bangkokpost.com/thailand/general/1713660?fbclid=IwAR2zQZxpUas4rzxyRYk2wALeutJumutaq8tCleT5zw6fzqFube_5-dkgZGQ

291 Mann, R. “The treatment of transgender prisoners, not just an American problem – A comparative analysis of American, Australian, and Canadian prison policies concerning the treatment of transgender prisoners and a universal recommendation to improve treatment” in *Law & Sexuality: Rev. Lesbian, Gay, Bisexual & Transgender Legal Issues* 15, 2006: 91.

292 Routh, D., Abess, G., Makin, D. et al. “Transgender Inmates in Prisons: A Review of Applicable Statutes and Policies” in *International Journal of Offender Therapy and Comparative Criminology*. 2015. DOI: 10.1177/0306624X15603745.

293 Ibid.

294 Transgender Law Center. *Advocating for yourself while in custody in California*. 2019.

295 US Department of Justice. *Transgender Offender Manual*. 11 May 2018.

state prison policies require that transgender prisoners continue to access medications, such as hormone therapy, that they were taking prior to incarceration.²⁹⁶

Even where continuation and freeze-frame approaches are implemented, transgender prisoners may find it difficult to provide official prescriptions given that they may have taken “street-based” hormones from unofficial sources, which were not prescribed by a medical doctor.²⁹⁷ Such requirements are common in the countries and jurisdictions presented in this subsection, as well as in New York State.²⁹⁸

Yet, the sudden cessation of hormone therapy – prescribed or otherwise – can have serious medical consequences.²⁹⁹ The consequences of abrupt withdrawal of hormones or lack of initiation of hormone therapy when medically necessary include a high likelihood of negative outcomes such as surgical self-treatment by auto-castration, depression, anxiety and suicidality.³⁰⁰ The implications for prison management are clear: denying access to hormones to treat gender incongruence increases safety and security risks.³⁰¹

Similarly, the freeze-frame approach can never be considered a good practice or even appropriate care.³⁰² Transgender inmates who are already on a hormone programme prior to incarceration should continue on that programme for medical and health reasons, with necessary adjustments as recommended by trained medical officers (the freeze-frame approach allows no variations or adjustments in dosage).³⁰³ This challenges the common perception and tacit assumption that the choice to undertake hormone therapy is simply a cosmetic decision, where in fact, such interventions are fundamental to psychological well-being and the ability to flourish.³⁰⁴ Note that hormone therapy should always be provided to transgender prisoners who have undergone gender-affirming surgery, irrespective of access prior to incarceration.

Meanwhile, the risks of diversion of hormones into black markets in prisons and other closed settings can and should be addressed where warranted through the use of injectable hormones, if not medically contraindicated.³⁰⁵

296 Transgender Law Center. *California Transgender Law 101*. 2006.

297 Association for the Prevention of Torture. *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*. Geneva, Switzerland. 2018.

298 Bassichis, M. *“It’s war in here”: A Report on the Treatment of Transgender and Intersex People in New York State Men’s Prisons*. Sylvia Rivera Law Project. New York USA. 2007.

299 Blight, J. *Transgender Inmates*. Australian Institute of Criminology. Canberra, Australia. 2000.

300 Weber-Main, A. M. *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*. World Professional Association for Transgender Health. 2011.

301 Lynch, S. and Bartels, L. “Transgender prisoners in Australia: an examination of the issues, law and policy” in *Flinders Law Journal* (19). 2017: 185.

302 Weber-Main, A. M. *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*. World Professional Association for Transgender Health. 2011.

303 Blight, J. *Transgender Inmates*. Australian Institute of Criminology. Canberra, Australia. 2000.

304 Lynch, S. and Bartels, L. “Transgender prisoners in Australia: an examination of the issues, law and policy” in *Flinders Law Journal* (19). 2017: 185.

305 Weber-Main, A. M. *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*. World Professional Association for Transgender Health. 2011.

Access to gender-affirming surgery

As noted in the previous subsection, many prison authorities feel that prisons and other closed settings represent an inappropriate environment for undertaking and completing gender transition. However, international guidelines explicitly note that the denial of medical interventions, including gender-affirming surgery, on the basis of residence in an institution is not reasonable.³⁰⁶ As recommended under the principle of equivalence, gender-affirming surgery should be available to transgender prisoners if it is available in the community.³⁰⁷

Some jurisdictions provide the necessary support from transgender prisoners to undertake gender-affirming surgery. For example, in the United States, access to gender-affirming surgery varies across jurisdictions: 25 states explicitly prohibit gender-affirming surgery for transgender prisoners,³⁰⁸ while only 7 states explicitly allow access to this medical intervention in prison settings.³⁰⁹ In California (USA), recent policy changes mean that access to gender-affirming surgery is allowed at the expense of the state across all state prisons.³¹⁰ Transgender prisoners have to undergo a screening process before being eligible for the surgery, which has several requirements: only prisoners who have more than two years left to serve before parole, have lived as a member of that gender with hormone therapy for a year, and have been diagnosed with gender incongruence, may be granted surgery.³¹¹

In Australia, the NSW prison policy allows transgender prisoners to make an application to have elective gender surgery specific to their needs, at their own expense,³¹² while in ACT such medical interventions require the explicit approval of the prison authorities on a case-by-case basis.³¹³ In Scotland (UK), transgender prisoners who want to access gender-affirming surgery are allowed to access specialist assessment and treatment that has been approved under the National Health Service.³¹⁴ In England and Wales (UK), prison medical staff refer all applications for gender-affirming surgery to a consultant specializing in gender incongruence, and prison authorities ordinarily accept advice from the consultant about whether gender-affirming surgery is considered appropriate in a particular case.³¹⁵

Good practice is to allow gender-affirming surgery for transgender prisoners who have received a valid medical diagnosis of gender incongruence. Best practice, such as in California (USA), will see the costs of such medical treatment absorbed by the state. Where gender-affirming surgery is available in community settings, denying access to such interventions in prisons and other closed settings can never be considered a good practice.

306 Ibid.

307 Atabay, T. *Handbook on prisoners with special needs*. United Nations Office on Drugs and Crime. Vienna, Austria. 2009.

308 Brown, G. R. and McDuffie, E. "Health Care Policies Addressing Transgender Inmates in Prison Systems in the United States" in *Journal of Correctional Health Care*. 2009. DOI: 10.1177/1078345809340423.

309 Routh, D., Abess, G., Makin, D. et al. "Transgender Inmates in Prisons: A Review of Applicable Statutes and Policies" in *International Journal of Offender Therapy and Comparative Criminology*. 2015. DOI: 10.1177/0306624X15603745.

310 Cassaidy, M. and Lim, L. *The Rights of Transgender People in Prisons*. Equal Justice Project. Auckland, New Zealand. 11 May 2016.

311 Ibid.

312 Government of New South Wales. *Custodial operations policy and procedures*.

313 Government of Australia. *Corrections Management (Reception and Management of Transgender Prisoners) Policy 2007*. Canberra, Australia. 2007.

314 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

315 Ministry of Justice. *The Care and Management of Transgender Offenders*. July 2011.

Access to HIV services

In line with the Mandela Rules³¹⁶ and the Bangkok Rules,³¹⁷ international medical guidelines such as WHO's Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations strongly recommend the implementation of a comprehensive package of HIV prevention, treatment, care and support services in prisons and other closed settings. The package recommended by UN agencies includes essential health sector interventions such as comprehensive condom and lubricant programming; harm reduction interventions for substance use, in particular needle and syringe programmes and opioid substitution therapy; behavioural interventions; HIV testing and counselling; HIV treatment and care; prevention and management of co-infections and other co-morbidities, including viral hepatitis, tuberculosis and mental health conditions; sexual and reproductive health interventions, as well as essential strategies for an enabling environment such as supportive legislation, policy and financial commitment, including decriminalization of behaviours of key populations; addressing stigma and discrimination; community empowerment; and addressing violence against people from key populations.³¹⁸

Specifically related to prisons, the WHO Guidelines also highlight the need to integrate the prevention of HIV transmission through medical and dental services; prevention of HIV transmission and other blood-borne infections through tattooing, piercing and other forms of skin penetration; and protecting staff from occupational hazards.³¹⁹ The Guidelines also include several recommendations for targeted interventions to meet the needs of transgender people.³²⁰ These services should ideally be linked with and integrated into national HIV health programmes, and accessible, used on a voluntary basis with informed consent and without coercion or pressure.³²¹

Examples of good practices for HIV service delivery in prisons have been extensively documented over the years, although the extent to which the literature covers good practices specifically targeting transgender prisoners remains limited. That said, interventions that contribute to HIV prevention among transgender prisoners have been identified in the literature. In 2016, the Swiss government approved a policy that includes specific provisions for prisons and other closed settings, requiring prison authorities to implement voluntary HIV and STI testing; information and education programmes about STI and HIV; and distributing HIV prevention commodities such as condoms and sterile injecting equipment.³²²

316 United Nations Office on Drugs and Crime. *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. Vienna, Austria. 2015.

317 United Nations General Assembly. *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*. United Nations Office on Drugs and Crime. Vienna, Austria. 16 March 2011.

318 World Health Organization. *Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations; 2016 Update*. Geneva, Switzerland. 2016

319 Ibid.

320 Ibid.

321 United Nations Office on Drugs and Crime. *Policy brief. HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions*. Vienna, Austria. 2012.

322 Association for the Prevention of Torture. *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*. Geneva, Switzerland. 2018.

In Ireland, a policy has been developed in relation to condom access.³²³ However, in the prisons that implement the policy, condoms are available only via a request to a medical officer.³²⁴ In an environment where sexual activity is prohibited, and being perceived as gay carries significant safety risks, prisoners reported that this policy actually discourages many prisoners from accessing condoms.³²⁵ A similar situation has been documented in England and Wales (UK), where the availability of condoms is a discretionary decision made by prison authorities and where condoms are often only available via prescription.³²⁶

In Thailand, a 2004 pilot project provided condoms to prisoners as part of health promotion activities, resulting in drastically reduced HIV rates among prisoners.³²⁷ In addition to condom distribution, prisoners were trained to offer information, counselling and support to other prisoners, and facilitate access to psychosocial support offered by an external community group representing people living with HIV.³²⁸

While not covered explicitly in the literature, good practices in the provision of HIV services to transgender prisoners should include information about the potential drug-drug interactions between antiretroviral treatment and hormones.

Access to psychosocial support

The risk of depression, anxiety, self-harm and suicide is higher among transgender people than the general population, and those risks are often exacerbated by the experience of incarceration.³²⁹ In this context, prison authorities must take steps to facilitate access to psychosocial support services tailored to the needs of transgender prisoners, while remaining vigilant to signs that could indicate the degradation of their mental health. Unfortunately, few countries and jurisdictions explicitly address the special mental health needs of transgender prisoners, although there are a few examples of good practices.

In New South Wales (Australia), a multidisciplinary team of health care staff, psychologists and prison managers are required to develop a holistic management plan, in which psychological interventions are integral, for every transgender prisoner.³³⁰

323 Carr, N., McAlister, S. and Serisier, T. *Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison*. Irish Penal Reform Trust. Dublin, Ireland. February 2016.

324 Ibid.

325 Ibid.

326 Gorden, C. et al. "A Literature Review of Transgender People in Prison: An 'invisible' population in England and Wales" in *Prison Service Journal*, 233, 2017: 11–22.

327 Association for the Prevention of Torture. *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*. Geneva, Switzerland. 2018.

328 Ibid.

329 Bassichis, M. "It's war in here": *A Report on the Treatment of Transgender and Intersex People in New York State Men's Prisons*. Sylvia Rivera Law Project. New York USA. 2007; Drakeford, L. "Correctional Policy and Attempted Suicide Among Transgender Individuals" in *Journal of Correctional Health Care*. 2018. DOI: 10.1177/1078345818764110; Rodgers, J., Asquith, N. L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017; Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

330 Government of New South Wales. *Corrective Services NSW Operations Procedures Manual*. Sydney, Australia. 2015.

In Malta, prison authorities are required to complete a thorough health screening of all prisoners upon intake, with special attention to mental health for transgender prisoners.³³¹ If transgender prisoners are judged to be in acute need of emotional support or at risk of self-harm or suicide, appropriate care and intervention is urgently implemented.³³²

In New Zealand, prison staff are required to facilitate a discussion with transgender prisoners within three days of their reception in a prison in order to define their support and management needs and elaborate a formal support plan.³³³ Similarly, in England and Wales (UK), prison staff are required to produce a management care plan outlining how transgender prisoners will be managed safely and decently within the prison environment.³³⁴

In Scotland (UK), transgender prisoner case conferences establish the level of risk and current needs for the individuals in custody, rather than relying on generalities.³³⁵ Furthermore, requests for assistance from transgender prisoners are addressed within seven days.³³⁶ Gender transition case conferences are recommended to be held on a monthly basis for at least three months after reception, then at least quarterly thereafter.³³⁷ Gender transition case conferences are used to explore all relevant circumstances of each particular case, including the prisoner's viewpoint and wishes, expert opinions of medical specialists treating the transgender prisoner, and the conduct of full risk assessments in order to make decisions about how to ensure the physical, mental and social health, safety, dignity and privacy of the prisoner.³³⁸ The Scottish prison policy also requires that where particular mental health risks are identified, these must be addressed as a priority.³³⁹

In American federal prisons, transgender prisoners are assessed within 14 days of intake and are presented with information regarding the range of treatment options available to them by a psychologist.³⁴⁰ Transgender prisoners may request a consultation with a specialized medical or mental health provider who knows about transgender health and can initiate contact with external groups such as TransLine,³⁴¹ which provide a comprehensive programme that expands access to health care for transgender individuals at a distance.³⁴²

Good practices in providing psychosocial support to transgender prisoners must ideally be implemented by a multidisciplinary team, with meaningful engagement of the transgender prisoner, while also relying on the guiding principles presented above, where external support should be mobilized in the event that the necessary capacity is not available internally.

331 Correctional Services Malta. *Malta Prison Policy (August 2016)*.

332 Ibid.

333 Department of Corrections (New Zealand). *Prison Operations Manual*.

334 Ministry of Justice. *The Care and Management of Transgender Offenders*. July 2011.

335 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

336 Ibid.

337 Ibid.

338 Ibid.

339 Ibid.

340 US Department of Justice. *Transgender Offender Manual*. 11 May 2018.

341 Transgender Law Center. *Advocating for yourself while in custody in California*. 2019.

342 See <http://project-health.org/transline/>

Access to conjugal visits

In jurisdictions where conjugal visits are permitted for heterosexual couples, but not to LGBTI prisoners, consideration should be given to revising the rules to ensure that all prisoners enjoy the same rights, irrespective of their sexual orientation.³⁴³ Facilities should not prohibit visits by same-sex partners of prisoners or impose restrictions on showing affection between prisoners and their same-sex partners during visits if these same restrictions do not apply to different-sex couples. For example, in July 2007, the Mexican National Human Rights Commission announced that Mexico City's prison system had allowed the first conjugal visit for an LGBTI prisoner, in line with the Commission's recommendations.³⁴⁴ Mexican prison authorities do not require visitors to be married to the prisoner in the context of conjugal visits.³⁴⁵

In Brazil, the Joint Resolution of the Presidency of the Republic and the National Council against Discrimination makes explicit reference to the Yogyakarta Principles, thereby guaranteeing the right to conjugal visits for LGBTI prisoners.³⁴⁶ And in Colombia, the General Regulation on Correctional Establishments establishes that no prison can deny the right to intimate visits on the basis of the sexual orientation or the gender identity of the prisoner.³⁴⁷ Finally, in Scotland (UK), prisoners have the right to receive visits from friends or relatives without discrimination or harassment from staff or other people in custody on the grounds of gender identity.³⁴⁸

Access to information

Access to information in prison settings may be limited due to availability, budgets, safety and security. However, published materials can often be accessed in hard copies through a prison library or dispensaries. While the issue of access to information for transgender prisoners has received limited attention in the literature, some jurisdictions are working to address this.

In New South Wales (Australia), transgender prisoners can have access to publications that address their needs, such as those from the Gender Centre, either by mail or through regular visits.³⁴⁹ In Canada, all communication products prepared and published by correctional facilities must be written using gender-inclusive language.³⁵⁰ In Malta, transgender prisoners are provided with information about relevant community organizations that can provide expert knowledge, information and support, including the means to contact them should they so choose.³⁵¹

343 Atabay, T. *Handbook on prisoners with special needs*. United Nations Office on Drugs and Crime. Vienna, Austria. 2009.

344 Ibid.

345 Ibid.

346 Association for the Prevention of Torture. *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*. Geneva, Switzerland. 2018.

347 Ibid.

348 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

349 Government of New South Wales. *Custodial operations policy and procedures*.

350 Harris, K. "Canada's prison system overhauls transgender inmate policy" in *CBC News*. 8 February 2018. Available at <https://www.cbc.ca/news/politics/transgender-inmates-csc-policy-1.4512510>

351 Correctional Services Malta. *Malta Prison Policy (August 2016)*.

Though not explicitly included in the literature, it stands to reason that developing effective partnerships between prison authorities and community organizations that have relevant capacity in regard to transgender communities can contribute to the provision of information, education and communication tools to transgender prisoners. Such partnerships do not necessarily require significant financial investments and can help prison management by shifting some of the regular tasks to those community organizations.

Access to complaints mechanisms

International guidelines recommend that prisons establish effective, accessible and confidential complaints mechanisms.³⁵² Given the vulnerability of transgender prisoners, they should be able to submit formal complaints about abuse or fear of abuse, without risking retaliation by staff or other prisoners.³⁵³ Victims or potential victims of abuse should rapidly be protected and, if the abuse has already taken place, the prisoner should receive immediate medical and mental health care.³⁵⁴

Several jurisdictions have established such mechanisms, including Australia, Canada, England and Wales (UK), Ireland and the United States. For example, in Ontario (Canada), all prisoners, including transgender prisoners, can contact the Client Conflict Resolution Unit, a service-focused unit that aims to resolve human rights complaints within correctional institutions.³⁵⁵ In Ireland, a Protocol and a Standard Operating Procedure in relation to prisoner complaints have been in place since June 2014.³⁵⁶

In the United States, prisoners can initiate contact with the PREA auditor and the Department of Justice.³⁵⁷ In addition, the PREA Standards require that all prisoners receive both basic information during intake about reporting sexual abuse, as well as comprehensive education about agency policies and procedures regarding sexual abuse prevention and response. In particular, PREA requires facilities to conduct a thorough incident review at the end of every investigation of alleged sexual abuse. Critically, the PREA Standards require that this review of every incident include specific consideration of whether the victim was targeted because they were LGBTI, which is important for identifying patterns of abuse targeting LGBTI people.³⁵⁸

In addition to considerations of effectiveness, accessibility and confidentiality, good practices in the context of submitting a formal complaint while in prison must ensure that prisoners filing such complaints do not fall victim to retaliation or are not subjected to further punishments.³⁵⁹ The risks associated with being perceived as a “rat” in prison settings can have significant detrimental consequences.³⁶⁰

352 Atabay, T. *Handbook on prisoners with special needs*. United Nations Office on Drugs and Crime. Vienna, Austria. 2009.

353 Ibid.

354 Ibid.

355 Ontario Correctional Services. *Admission, classification and placement of trans inmates, and staff training: highlights*. Toronto, Canada. 2015.

356 Carr, N., McAlister, S. and Serisier, T. *Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison*. Irish Penal Reform Trust. Dublin, Ireland. February 2016.

357 Daley, C. *Safety Inside: Problems Faced by Transgender Prisoners and Common Sense Solutions to Them*. Transgender Law Center. San Francisco, USA. 15 August 2015.

358 National Center for Transgender Equality. *Policies to increase safety and respect for transgender prisoners: A guide for agencies and advocates*. Washington DC, USA. October 2018.

359 Daley, C. *Safety Inside: Problems Faced by Transgender Prisoners and Common Sense Solutions to Them*. Transgender Law Center. San Francisco, USA. 15 August 2015.

360 Carr, N., McAlister, S. and Serisier, T. *Out on the Inside: The Rights, Experiences and Needs of LGBT People in Prison*. Irish Penal Reform Trust. Dublin, Ireland. February 2016.

Finally, verified and legitimate complaints must be acted upon. The United Nations Special Rapporteur on Torture recommends authorities to investigate reports of prisoner-on-prisoner violence, to prosecute and to punish those responsible, and to offer protective custody to vulnerable individuals, without marginalizing them from the prison population more than is required by the need for protection and without putting them at further risk of ill treatment.³⁶¹

Transgender committees

Transgender committees have been established in Scotland (UK) as well as some jurisdictions in the United States to support the effective management of transgender prisoners. These committees represent a good practice given that they can contribute to reducing the challenges associated with managing transgender prisoners, as well as the workload borne by prison staff. In parallel, such committees, where appropriately established, can facilitate meaningful involvement and participation of the transgender community and improve overall prison management.

Guidelines in the United States stipulate that the composition of transgender committees can include prison management, health and medical staff, mental health experts, gender specialists, representatives from rehabilitation programmes, probation officials, and justice officials mandated with prison governance,³⁶² as well as a PREA coordinator and community advocates, including transgender community representatives.³⁶³ In Scotland (UK), transgender committees require the participation of prison staff, a social worker, a medical officer, the transgender prisoner whose case is being discussed, the local equality and diversity manager, a representative of a transgender organization (if the transgender prisoner so desires) and others as required (for example, a manager from another establishment if a transfer is being considered).³⁶⁴

Such committees are especially critical in the context where prisons have established a case-by-case policy to address the needs of transgender prisoners. In such contexts, the committee can provide a guiding voice and multidisciplinary advice that also diffuses the risk and responsibility associated with decisions concerning management of transgender prisoners. For example, such committees can provide valuable insights and assistance in making decisions relating to many of the issues addressed in this report. Similarly, transgender committees can contribute to channelling and resolving prisoner complaints, both related to other prisoners as well as to prison staff. In addition, transgender committees can be critical in the daily management of transgender prisoners' cases, through case management regarding health and social support.

Where transgender committees have full and final authority in all matters related to the management of transgender prisoners, such committees represent good practice. However, transgender committees that formulate recommendations for consideration by prison authorities who retain full executive decision-making authority should be considered less than best practice.

361 United Nations Commission on Human Rights. *Report of the Special Rapporteur on the Question of Torture, Theo Van Boven, Submitted Pursuant to Commission Resolution 2002/38*, 17 December 2002, E/CN.4/2003/68.

362 US Department of Justice. *Transgender Offender Manual*. 11 May 2018.

363 Hlavinka, E. "Trans Inmates and Healthcare: What Is Best Practice?" in *MedPathology.com*. Austin, USA. 29 October 2018.

364 Scottish Prison Service. *Gender Identity and Gender Reassignment Policy for those in our Custody*. March 2014.

Ideally, as a matter of good practice, building on the principles of meaningful involvement and transparency, transgender prisoners should be allowed to meet the transgender committee to submit formal requests, and transgender prisoners should be allowed to attend committee meetings that deal with their own case.

Staff training

The Mandela Rule #76 recommends that staff training should include “relevant national legislation, regulations and policies, as well as applicable international and regional instruments”, and prison staff who are working with certain categories of prisoners shall receive training that has a corresponding focus.³⁶⁵ Additional international guidelines strongly recommend that prison staff be regularly trained to address the special needs of transgender prisoners:

Staff training should include awareness-raising regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity. The prohibition of discrimination based on sexual orientation and gender identity, and the special needs of LGBT prisoners should be included in training. Staff should also be trained to implement specific procedures in cases of sexual assault, to detect signs of fear and distress among LGBT prisoners and ensure that they receive immediate protection and assistance where necessary. Staff should be willing to listen to the concerns and complaints by members of such groups and be instructed to take these complaints seriously. They should also be trained to detect signs of suicidal tendencies, and refer such prisoners to psychological support services as necessary.³⁶⁶

Policies in Australia,³⁶⁷ Brazil, Chile, Canada, England and Wales (UK), Malta and some jurisdictions in the United States, all include provisions for training of prison staff regarding gender sensitization, including on the special needs of transgender prisoners. In Brazil, a joint resolution issued in 2014 by the National Council against Discrimination and the Presidency of the Republic urges prison authorities to ensure “ongoing training to professionals of prison establishments on human rights and the principles of equality and non-discrimination, including with regards to sexual orientation and gender identity.”³⁶⁸ Similarly, in Chile, the regional Court of Iquique ruled that prison staff must be trained on issues related to “gender identity, sexual orientation and gender expression.”³⁶⁹

In Malta, the Director of Correctional Services is responsible for ensuring that training is given to all staff, including correctional officers, prison management and administration teams, counsellors, social workers, educators and health staff, regarding transgender prisoners. Trainings are meant to empower prison workers in preventing, identifying and responding to bullying, harassment and discrimination on the grounds of sex, sexual orientation, gender identity, gender expression and sex characteristics.³⁷⁰

365 United Nations Office on Drugs and Crime. *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. Vienna, Austria. 2015.

366 Atabay, T. *Handbook on prisoners with special needs*. United Nations Office on Drugs and Crime. Vienna, Austria. 2009.

367 Lynch, S. and Bartels, L. “Transgender prisoners in Australia: an examination of the issues, law and policy” in *Flinders Law Journal* (19). 2017: 185.

368 Association for the Prevention of Torture. *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*. Geneva, Switzerland. 2018.

369 Ibid.

370 Correctional Services Malta. *Malta Prison Policy (August 2016)*.

However, in jurisdictions such as England and Wales (UK), trainings are available, sometimes encouraged, but not necessarily mandatory.³⁷¹ In the United States, trainings for prison staff regarding the management of transgender prisoners are overly focused on safety and security rather than on care and support for transgender prisoners.³⁷² While mandatory training for all prison staff is the good practice that prison administrations should aim to achieve, some jurisdictions may opt to offer targeted opportunities for capacity-building based on the level of contact with transgender prisoners or based on other indicators. However, this should be considered as a second option only.

Lastly, it is worth pointing out that the Canadian policy also requires prison staff to be trained and retrained on a regular basis. However, stakeholders in Canada have highlighted the need for training materials and capacity-building sessions to be aligned with the most recent policy changes in order to ensure that those changes are well integrated into practice and do not put transgender prisoners in harm's way.³⁷³

371 Ministry of Justice. *Review on the Care and Management of Transgender Offenders*. London, United Kingdom. November 2016.

372 US Department of Justice. *Transgender Offender Manual*. 11 May 2018.

373 Canadian Press. "Transgender inmates and their safety" in *AdvocateDaily*. Ottawa, Canada. 2018. Available at <https://www.advocatedaily.com/jordana-goldlist-transgender-inmates-and-their-safety.html>

Media analysis

Out of the 109 documents analysed to inform the preparation of this report, a total of 28 (25.7%) were news articles published by media agencies, including a press release. Among the 28 media pieces, 1 (3.6%) covered Brazil, 5 (17.9%) covered Canada, 5 (17.9%) covered England and Wales (UK), 2 (7.1%) covered Italy, 2 (7.1%) covered Malta, 3 (10.7%) covered the Netherlands, 1 (3.6%) covered New Zealand, 1 (3.6%) covered Scotland (UK), 2 (7.1%) covered Thailand, 5 (17.9%) covered the United States and 1 (3.6%) covered multiple countries while focusing on the situation of transgender prisoners in France. All media pieces were published in or after 2010: 2 articles (7.1%), both covering Italy, were published in 2010; 2 (7.1%) were published in 2015; 3 (10.7%) were published in 2016; 2 (7.1%) were published in 2017; 13 (46.4%) were published in 2018; and 6 (21.4%) were published in 2019.

Overall coverage presented changes in prison policies and practices, most of which related to the management of transgender prisoners. Out of the 28 pieces, 21 (75%) were supportive of the changes, presenting the new policies and practices in a positive light, advancing human rights and meeting political commitments. In contrast, three pieces (10.7%) presented the proposed changes as negative, one in particular that accused those supporting housing transgender prisoners according to their gender identity as a “betrayal” of women. In contrast, three (10.7%) were balanced, presenting both positive and potentially negative aspects of the changes. Only one piece (3.6%) was neutral, giving no opinion as to whether the changes were positive or negative, focusing instead on presenting facts.

This summary analysis of media presentation of changes in prison policies and practice related to the management of transgender prisoners seems to indicate that media agencies have remained respectful, focused on newsworthy content, and generally avoided sensationalization and discrimination. This further seems to indicate that changes in prison policies and practices to better respond to the needs of transgender prisoner are well received as a progressive step towards more effective and egalitarian societies.

Conclusions

Many of the issues explored in this report challenge the fundamental principles underpinning the rigid binary cisnormative environment that defines the modern correctional system in place virtually everywhere.³⁷⁴ Meanwhile, prison practices and policies informed by cisnormative frameworks of sex and gender often identify transgender people as safety and security risks and as requiring additional workload.³⁷⁵ However, some well-meaning approaches designed to manage those risks and alleviate the additional workload can exacerbate those very risks and increase the workload of prison staff by reinforcing the paradigms that discriminate against those who do not conform to gender norms.

However, this report has shown that multiple policies and different practices are currently being implemented with varying degrees of success in a wide variety of jurisdictions across the globe in order to improve the management of transgender prisoners. Consideration of the legal and policy context and the operational environment has led authorities to apply different approaches: blanket policies versus case-by-case policies; general population housing versus segregation; protective custody versus dedicated units; single occupancy units versus shared cells; and based on sex assigned at birth and genitals versus gender identity; on pre-operative versus post-operative status; and on legal gender recognition.

Discussions related to these operational considerations are often grounded on the belief that there is a conflict between the ultimate objective of maintaining safety and security on the one hand, and on the other on the perception that respect for human rights is a privilege. Yet addressing the needs of transgender prisoners and aligning with the good practices documented in this report should not be thought of as a privilege or only as a strategy to further the advancement of human rights and raise standards of mental and physical health, but rather as effective strategies to improve overall prison management and reduce safety and security incidents.

As noted earlier, prison officials and officers (and the governments they work for) have a duty of care towards the people who are incarcerated in prisons, jails and other closed settings.³⁷⁶ Part of that duty of care is to ensure the safety and security of not only the communities around the institutions and the people who work in those institutions but also of the individuals detained in those institutions. As such, authorities must find an effective balance to simultaneously minimize the risks to the community, to the prison workers, and to the prisoners, including transgender prisoners.

But that balance cannot be achieved through a simple choice where preserving safety and security in a correctional environment requires the sacrifice of the rights of transgender prisoners (or other minorities) and ignoring their specific needs, or vice versa. In fact, as this report has shown, addressing the needs of transgender prisoners will often contribute to reinforcing safety and security, reducing the risk of incidents, and leading to overall improvements in prison management. Therefore, by

374 Jenness, V. and Fenstermaker, S. "Agnes goes to prison: Gender Authenticity, Transgender Inmates in Prisons for Men, and Pursuit of "The Real Deal"" in *Gender & Society*. 2013. DOI: 10.1177/0891243213499446; Rodgers, J., Asquith, N. L., and L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

375 Rodgers, J., Asquith, N. L., and L. and Dwyer, A. *Cisnormativity, criminalisation, vulnerability: Transgender people in prisons*. Hobart, Australia. 2017.

376 Lynch, S. and Bartels, L. "Transgender prisoners in Australia: an examination of the issues, law and policy" in *Flinders Law Journal* (19). 2017: 185.

fully realizing a duty of care towards all prisoners, including transgender prisoners, governments and authorities would be moving closer to realizing their own internal objectives related to safety and security.

The biggest challenge in managing transgender prisoners is the paradigmatic shift that is often demanded of prison authorities in engaging in meaningful discussions with the prisoners about their own fate within the correctional environment. Many of the good practices to resolve the issues identified in this report require that prison authorities engage with transgender prisoners, solicit their opinions, and take those opinions into consideration as they formulate and implement policies and procedures. Giving a choice to prisoners is an even greater challenge to the traditional top-down practices so common in the correctional sector.

Yet good practices in terms of management of transgender prisoners are those that ultimately empower transgender individuals and allow them to live their SOGIE without discrimination, punishment or risk of violence. The meaningful involvement and participation of transgender people in decisions that impact their lives – especially while detained in closed settings – is critical to effective prison management. At minimum, transgender prisoners should be informed directly, in a respectful manner, about the decisions made by prison authorities regarding the issues included in this report and be given the opportunity to ask clarifying questions. Ideally, transgender individuals, including those in and who have been in prison, should be involved in developing, implementing and monitoring and evaluating policies related to the incarceration of transgender people.

That said, it is clear at the conclusion of this global review that no one country or jurisdiction has implemented the best practices to address all issues that transgender prisoners face. In some cases, the literature remains vague about which approaches are indeed good practices, which are free of risks, and which are always fully effective. In that sense, the ideal combination of policies and practices for each jurisdiction or country should be the result of a negotiation between relevant stakeholders informed by evidence, including the content of this report.

Recommendations

Based on the good practices identified through the literature review, the following targeted recommendations have been formulated, which encourage governments and prison authorities to align their policies and practices with evidence of good practices. Additional recommendations for development partners, donors and community organizations have been included to encourage a concerted effort towards improving the management of transgender prisoners.

Improving management of transgender prisoners

The management of transgender prisoner is not an issue that solely affects transgender prisoners or the transgender community. All segments of the community, the criminal justice system (including other prisoners) and the health sector are impacted by ineffective management of transgender prisoners. As such, advocacy for improving the management of transgender prisoners should be a concerted effort that mobilizes the LGBTI community, human rights activists, civil society groups engaged in sustainable development, representatives of the criminal justice system (from law enforcement to lawyers all the way to judges), health professionals and paraprofessionals, as well as academics, researchers and representatives from donor agencies. Promoting the good practices identified in this report and pushing responsible agencies to align their policies and practices with the recommendations below is instrumental to effective change and improving overall prison management.

Legal gender recognition

Governments should allow transgender individuals to legally change their gender and recognize their gender identity as binding, even in the context of prison management. Where gender recognition laws and policies are in place, prison authorities should encourage and support all transgender prisoners who desire to change their gender before the law. Ideally, the process should be user-friendly, speedy and provided at low-cost or free of charge. Efforts should be made to ensure that terms such as 'gender', 'gender identity', 'gender expression', 'transgender' are adequately and unambiguously defined and grounded on the principle of self-determination across all relevant laws and policies.

Data

Governments must urgently produce and report data about transgender prisoners including the number of transgender prisoners and the approaches used by national and sub-national governments in managing their needs. UNDP, other relevant development partners and community groups should advocate for governments to systematically report the number of transgender prisoners, in line with the two-step approach recommended by the Williams Institute,³⁷⁷ disaggregated by male-to-female and female-to-male transgender. More specifically, the following governments should be targeted in an initial round of advocacy efforts, given their leadership on the issue: Argentina, Australia, Canada, Colombia, England and Wales, Ireland, Malta, Scotland and the USA (California).

³⁷⁷ The GenIUSS Group. *Best practices for Asking Questions to Identify transgender and Other Gender minority respondents on population-based Surveys*. J.L. Herman (ed.). Los Angeles, CA: the Williams Institute. 2014.

Identification

Governments should allow for prisoners to self-identify as transgender, without the need for medical or psychological examination or confirmation, irrespective of legal recognition, legal documents and surgical status. This should be reflected in policies and practices.

Names and pronouns

Prison authorities should allow for the use of preferred names, titles and pronouns, in all verbal and written communication, irrespective of official documents and surgical status. Furthermore, consideration should also be given to prohibiting the use of names, titles and pronouns that are out of line with prisoners' gender identity and disciplining prison workers who fail to uphold policies and practices (as well as those who use derogatory, demeaning, and stigmatising language) in this regard. Respectful language and terms should always be used when discussing or referring to all individuals regardless of gender.

Escorting

Prison authorities should ensure that escorting policies and practices remain sensitive to marginalisation, stigmatisation and discrimination of transgender prisoners, and ensure that such efforts are genuinely necessary where they are implemented. Given the potential drawbacks of a rigorous blanket escorting policy for transgender prisoners, it is most appropriate to consult the transgender prisoner to determine whether the individual would prefer to be escorted or not, and align the approach based on the individual prisoner's choice.

Housing

Governments and prison authorities should allow transgender prisoners to participate in the decision regarding their housing in prisons, be offered a choice balanced against security concerns, and be informed about the final outcomes related to their housing. Segregation and/or protective custody should be avoided at all costs, unless serious and irremediable safety and security issues limit housing options. If segregation does take place, such policies and practices should spell out a clear timeline and a maximum amount of time that transgender prisoners can be kept in segregation and/or protective custody, ideally measured in days rather than weeks or months.

Body searches

Prison authorities should prohibit frequent and unnecessary strip searches of transgender prisoners and encourage recordkeeping of the number of times each prisoner is searched in order to identify any discrimination. Except in emergency situations, transgender prisoners should be given a choice regarding the gender of the person conducting the search, to ensure that the search is conducted by a person of the appropriate gender, with minimum interference, while respecting personal dignity and privacy.

Access to bathrooms and showers

Prison authorities should take into account transgender prisoners' gender identity, physical status, dignity, and personal safety when facilitating access to shower and bathroom facilities. Where dedicated, private or separate facilities cannot be provided, prison authorities should put in place physical barriers to maximize privacy, without compromising safety and security.

Confidentiality

Prison authorities should limit access to and control the dissemination of personal and health information related to transgender prisoners. Policies should explicitly refer to prisoners' right to privacy, and safeguards and controls should be deployed to enforce this policy. However, some transgender prisoners may have their gender status revealed unavoidably simply because of where they are housed (for example, as a woman in a men's facility). Even in such cases, prison authorities must still protect the individual's privacy to the extent possible, such as with regard to specifics of a prisoner's medical history.

Access to clothes and commodities

Prison authorities should facilitate access to clothes and personal commodities that allow transgender prisoner to express their gender identity by offering gender-neutral purchase options, where any prisoner can purchase the approved commodities, irrespective of gender. Where such gender-neutral options are not available, a second line alternative can be implemented by allowing transgender prisoners to purchase commodities approved for both men and women. Prison authorities should also consider allowing transgender prisoners to dress in clothes that align with their gender identity. However, where prisoner uniforms are required, transgender prisoners should be allowed to choose the uniform that they feel is most appropriate.

Access to health services

At minimum, governments and prison authorities should ensure that access to health services and standards of care in prisons and other closed settings mirror those available in the community. Ideally, health service delivery in prisons should strive to surpass the availability and quality of health care delivered in community settings. Prison authorities should mobilize health expertise from external professionals and establish partnerships with relevant community groups in the community in order to meet transgender prisoners' health needs.

Access to hormones

Government and prison authorities should acknowledge that hormone therapy is a necessary medical intervention to address gender incongruence. Ideally, people diagnosed with gender incongruence who are eligible for hormone therapy and choose to transition should receive the support to initiate such therapy, even in prisons and closed settings. At minimum, individuals who have started a hormone treatment regimen prior to entering correctional facilities should be supported to continue on the same or similar therapies and monitored accordingly. All validation requirements regarding prior hormone treatment should be waived, acknowledging that transgender people sometimes access hormones without medical supervision. Hormone therapy should always be provided to transgender prisoners who have undergone gender-affirming surgery, irrespective of access prior

to incarceration. Where such health services are included in national health insurance schemes, the cost should be absorbed at an equal rate as for transgender people living in the community.

Access to gender-affirming surgery

Governments and prison authorities should allow gender-affirming surgery for transgender prisoners who have received a valid medical diagnosis of gender incongruence. Ideally, where such health services are included in national health insurance schemes, the cost should be absorbed at an equal rate as for transgender people living in the community.

Access to HIV services

Governments and prison authorities should facilitate access to a comprehensive package of HIV prevention, treatment, care and support services for all prisoners, including transgender prisoners. These services should ideally be linked with and integrated into national HIV health programmes, and accessible on a voluntary basis with informed consent and without coercion or pressure. HIV services for transgender prisoners should include information about the potential drug-drug interactions between antiretroviral treatment and hormones.

Access to psychosocial support

Prison authorities should acknowledge that transgender prisoners are generally more vulnerable than other prisoners. As such, prison authorities should facilitate access to psychosocial support for all transgender prisoners through multidisciplinary case management approaches, with meaningful engagement of the transgender prisoner.

Access to conjugal visits

Prison authorities should ensure that all prisoners enjoy the same rights to conjugal visits, irrespective of their sexual orientation or marital status.

Access to information

Prison authorities should ensure that targeted information materials are available in prisons to support transgender prisoners. Prison authorities should develop effective partnerships with community organizations that have relevant capacity in regard to transgender communities to provide information, education and communications tools to transgender prisoners. Prison authorities should ensure that all information available to transgender prisoners is written in gender sensitive language.

Access to complaints mechanisms

Government and prison authorities should establish effective, accessible and confidential complaints mechanisms in all prisons. Prison authorities must ensure that, where complaints are made, prisoners filing such complaints do not fall victim to retaliation or are not subjected to further punishments.

Government and prison authorities should implement monitoring procedures to prevent, detect, and respond to sexual abuse in areas such as hiring, training, supervision and monitoring, data collection, reporting, investigations, health care, and other support for those who report abuse. Individuals must have multiple ways to internally make private reports of sexual abuse and harassment, retaliation (by

staff or other prisoners), and any staff negligence that may have contributed to abusive incidents. As noted, no disciplinary action should be taken against a prisoner for filing a grievance unless the agency can demonstrate that it was filed in bad faith.

Transgender committees

Prison authorities should establish multidisciplinary transgender committees with full and final authority in all matters related to the management of transgender prisoners. Ideally, transgender prisoners should be allowed to request to meet the transgender committee to submit formal requests and complaints, and transgender prisoners should be allowed to attend committee meetings that deal with their own case.

Staff training

Governments and prison authorities should ensure that all prison staff receive regular training to ensure they understand and address the special needs of transgender prisoners. Trainings should be designed to empower prison workers in preventing, identifying and responding to bullying, harassment and discrimination on the grounds of sex, sexual orientation, gender identity, gender expression and sex characteristics.

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