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Abstract

Approach

There is limited global data on numbers of incarcerated transgender people, an identified vulnerable prison group. There are inherent difficulties for prison authorities regarding placement, security aspects and management of transgender persons. While the concerns apply to all transgender prisoners, the current literature focuses mainly on transgender women and this commentary reflects this present bias. A socio-legal approach describes and evaluates international human rights' conventions and human rights' law, soft law instruments mandating non-discriminatory provisions in the prison setting, and relevant European and domestic case law.

Purpose

The incarceration of transgender people is described as a “*double punishment*” based on lack of gender recognition and ability to gender affirm, and with their experiences and conditions in prison tantamount to torture. The purpose of this Viewpoint is to, illustrate the continued “*double punishment*” of incarcerated transgender people (in particular trans-women) and identify and describe breaches in human and gender rights and minimum standards of care.

Findings

Transgender prisoners experience amplification of trauma underpinned by lack of legal gender recognition, inability to gender-affirm, discrimination, transphobia, gender maltreatment and violence by other prisoners and prison staff. Despite obligations and recommendations in international human rights' instruments, and standard operational procedures at the prison level, very few countries are able to fully uphold the human rights of and meet the needs of transgender people in prison.

Originality

This Viewpoint is important as it highlights the dearth of knowledge exploring human rights discourses and concerns related to the phenomenon of incarcerated transgender persons. It uniquely focusses on European and domestic law and illustrates the inherent tensions between human rights, sexual orientation and gender identity rights and security considerations regarding transgender issues in

prisons. Rights assurances centre on the principles of equality, dignity, freedom of expression, dignified detention and the prohibition of inhumane treatment or punishment.

Key Words:

Transgender; prison; placement; human rights; Europe

“On December 30th 2016, Jenny Swift a transgender prisoner in the UK was found dead in her cell, whilst on remand in a male prison. Her requests to be assigned to a female prison were rejected by authorities because she did not have a Gender Recognition Certificate (“GRC”) and was therefore legally male. She refused to wear the male prison uniform and was reported to have entered the prison naked. She was called “Mr” by prison staff, and harassed by other prisoners. Despite the fact that she had been living as a women and had been taking oestrogen treatment sourced online for over three years, she was denied continued hormone treatment because her treatment had not been prescribed by a medical practitioner. She was unwell, experiencing withdrawal symptoms, and depressed.” (Halliday, 2017)

Incarceration and transgender people

On any given day, almost 11 million people globally are detained in prisons or other closed settings (Penal Reform International, 2020). The prison population is heterogenous and contains specific vulnerable prisoner groups (UNODC, 2009; 2016). Sexual minorities and transgender prisoners are particularly vulnerable in the prison environment (Rodgers et al., 2017; Brömdal et al., 2019; Van Hout et al., 2020). There is limited global data on numbers of incarcerated transgender people due to prison systems capturing committal data pertaining to legal sex status, not gender identity, and under-reporting of transgenderism due to stigma and disclosure concerns (Penal Reform International, 2020; UNDP, 2020).

According to the WHO in 2020, the umbrella term transgender *“describes a diverse group of people whose internal sense of gender is different than that which they were assigned at birth, and whose gender identity and expression does not conform to the norms and expectations traditionally associated with their sex at birth.”* It is not a diagnostic term, does not imply sexual orientation, or a medical condition, and includes those living in accordance with their gender identity in the absence of medical treatment, and those undergoing medical treatment to support the transitioning process of their physical state to conform to their internal sense of gender identity (WHO, 2020). Complexities are also present with many transgender people identifying as non-binary (neither male nor female) (FRA, 2014).

This creates difficulties for transgender prisoners as decisions by prison authorities on placement and security and safety considerations are based on inflexible binary classifications, which fail to protect their health and uphold their rights in a gender affirming fashion while incarcerated (Brömdal et al., 2019; Van Hout et al., 2020).

Prison systems are underpinned by cis-normative (the assumption that all human beings have a gender identity which matches their sex assigned at birth) frameworks of sex and gender (Rodgers et al., 2017). Placement decisions by prison authorities are commonly based on pre-operative/non-operative state, or on legal gender recognition (UNDP, 2020). Placement of transgender prisoners occurs in multiple ways; using binary classification, general population housing, segregation or protective custody, shared or single occupancy cells, specialist pods/wings, or case by case where gender identity and safety are considered prior to allocation (Lamble, 2012; Brömdal et al., 2019; Van Hout et al., 2020). These decisions are highly complex, balanced between security and safety, the prevention of harm to transgender prisoners (e.g. sexual coercion and rape) and the potential threat to fellow prisoners (e.g. the placement of trans-women (particularly sex offenders) in female wings) (Lamble, 2012). Further, where specialist wings are employed, they generally house all prisoners deemed vulnerable, with many transgender people reporting continued distress (McCauley et al., 2018). Progressive prison systems view gender on the basis of self-identification (i.e. parts of Australia (New South Wales and Victoria), Canada, Malta, Scotland), with the United Kingdom, Italy and Thailand having dedicated transgender prisons (UNDP, 2020).

Prison settings amplify vulnerability, trauma and transphobic abuse. Maltreatment includes misgendering (intentional use of the wrong name and gender/pronoun), violence by other prisoners and prison staff (sexual coercion, rape), restricted access to gender appropriate clothing and other items, and restricted or denial by prison authorities of access to gender affirming medical care (e.g. hormone therapy, surgery) (WPATH, 2012; Van Hout et al., 2020; UNDP 2020). Psychological trauma is also caused by long periods of detention and solitary confinement which contributes to self-harm (including attempted auto-castration and suicide) (UNAIDS, 2014; Van Hout et al., 2020; UNDP 2020). In some countries (Australia, Canada, Italy, New-Zealand, Malta, United Kingdom) and some states in the US, transgender prisoners are permitted to wear clothing appropriate to their gender identity, regardless of

placement, and prison policies advocate for gender neutral and respectful language (for example preferred names and pronouns, regardless of gender, surgical status and official documents (UNDP, 2020). This is not the case in many countries worldwide. Prison healthcare providers generally lack transgender specific health knowledge and have limited clinical competency in caring for transgender prisoners (Brömdal et al., 2019; Van Hout et al., 2020). The World Professional Association for Transgender Healthcare (WPATH, 2012) continues to advocate for the provision of adequate access to medical care and counselling for incarcerated transgender people, which recognise their special health needs on the basis of their gender identity. Countries differ; some initiate treatment in prison, some adopt a “freeze frame approach”, determining continued access to hormone treatment at the same level as prior to committal, or a continuation approach with adjusted dosage based on medical consultations (e.g. Australia, Malta, New Zealand, Thailand) (UNDP,2020). Very few permit access to gender reassignment surgery (GRS) equal to that in the community (Australia, United Kingdom, the United States (US)). Problems also exist where transgender people have accessed hormone treatment via online or illicit sourcing, thus complicating medical care delivery when detained, and prisons may also be unable to access necessary specialist input.

Human rights obligations and recommendations

Despite obligations and recommendations in international human rights instruments and international standard operational procedures at the prison level, very few countries fully uphold the human rights of or meet the needs of incarcerated transgender people (WHO, 2014; UNDP, 2020). Their incarceration is described as a “double punishment”; “the pervasive discrimination in the judicial system that continues to fail to give due legal recognition of transgender people’s right to dignity and self-identity” and “the often ..cruel and unusual...mistreatment of them in the prison” (Erni et al., 2013; 139).

This *Viewpoint* utilises a socio-legal approach (Hart, 1961) to describe and evaluate international human rights conventions and human rights law, soft law instruments mandating non-discriminatory provisions in the prison setting. This approach was chosen to probe the relationship between law, medical ethics and prison systems’ lack of recognition of gender identity as central to upholding of medical care needs in prison, and spotlight why unmet gender-affirmation needs and

restrictions in accessing gender-affirming medical care whilst incarcerated continue, despite the strong evidence base for significant trauma, morbidity and mortality of these vulnerable prisoners; and the increasing (albeit) small number of legal challenges worldwide. It uses relevant European and domestic case law as examples, in order to illustrate how this continued “*double punishment*” of incarcerated transgender people continues. Finally it illustrates the range of human rights breaches and inadequate standards of care. While the concerns apply to all transgender prisoners, the current literature focuses mainly on transgender women and this *Viewpoint* reflects this present bias.

International human rights’ treaties are supported by non-binding or soft law principles mandating prisoner human rights whilst detained, and that suffering, inherent in detention, shall not be worsened by the prison regime itself. The UN Basic Principles for the Treatment of Prisoners (Principle 5) states: “*Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and [...] United Nations covenants*” (UN General Assembly, 1990). The updated UN Standard Minimum Rules for the Treatment of Prisoners (*Nelson Mandela Rules*) (Rule 1) states that “*All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhumane or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification*” (UN, 2015).

At regional levels, the Kampala Declaration on Prison Conditions in Africa declares “*that prisoners should retain all rights which are not expressly taken away by the fact of their detention*”(ACHPR, 1996); and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Principle VIII) states: “*Persons deprived of liberty shall enjoy the same rights recognised to every other person by domestic law and international human rights law, except for those rights which exercise is temporarily limited or restricted by law and for reasons inherent to their condition as persons deprived of liberty*”(IACHR, 2008). The European Prison Rules (EPR) (Rule 2) states: “*Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody*” and Rule 5 specifies: “*Life in prison shall*

approximate as closely as possible the positive aspects of life in the community” (Council of Europe, 2020).

These treaties adopt a universalistic approach to human rights, and according to critics are not gender neutral where prisons are concerned (Ciuffoletti, 2020). The provision of non-discrimination however within the *Nelson Mandela Rules* states (*...apply to all prisoners without discrimination ... the specific needs and realities of all prisoners*) and is further emphasised in rule 2(2) which mandates prison administrations to “*take account of the individual needs of prisoners, in particular the most vulnerable categories*” (UN, 2015). Whilst the spotlight is increasingly shone on the gendered and health rights of (heteronormative) women in prisons in the UN Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders (*Bangkok Rules*) (UN, 2010; Van Hout and Mhlanga-Gunda, 2018), however transgender prisoners are not referred to in the *Bangkok Rules*. The *Mandela Rules* also do not specifically refer to women, however Rule 7 recommends that authorities facilitate determination of gender identity and notate during committal “*precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender*”(UN, 2015). The updated 2017 Yogyakarta Principles given their central focus on sexual orientation and gender identity (SOGI) are however applicable to prisons. These principles mandate the right to treatment with humanity while in detention (Principle 9), along with the right to bodily and mental integrity (Principle 32), whereby one’s gender identity is integral to “*dignity and humanity and must not be the basis of discrimination or abuse*” and that, as far as possible, prisoners should be involved in decisions “*regarding the place of detention appropriate to their sexual orientation and gender identity*” (Yogyakarta Principles, 2017).

Recognition of and ability to affirm gender identity is central to the health and wellbeing of transgender people both in prison and in the community. Whilst international human rights treaties do not explicitly refer to SOGI, discrimination grounds can be interpreted to include “*other status*”. Confusion arises when the terms “*gender*” (a social construct) and “*sex*” (individual anatomy) are used interchangeably in the prison setting (Barnes, 1998; Mann, 2006). All Council of Europe (CoE) member states are required to legally recognise the gender affirmation of trans-persons with the European Court of Human Rights (ECtHR) ruling that the failure of a State to alter the birth certificate of a person to

the preferred gender constitutes a violation of ECHR Article 8 (right to private and family life) International Bar Association LGBTI Law Committee, 2009; see *B v France*, ECtHR, 1992; *Goodwin v. United Kingdom*, ECtHR, 2002). The ECtHR applies a literal interpretation of Article 14 (prohibition of discrimination) European Convention of Human Rights (ECHR, 2020), and has ruled that “*gender identity*” is a protected characteristic (see *Abdulaziz, Cabales and Balkandali v. The United Kingdom*, ECtHR, 1985; *Identoba and others v Georgia*, ECtHR, 2015). Where prisons are concerned European case law tends to adopt gender blind and biologically oriented interpretations, with a dearth of case law on transgender people in prison. The CoE Steering Committee for Human Rights outlines measures to eliminate discrimination on grounds of SOGI, with recommendation 4 stating “*measures should be taken so as to adequately protect and respect the gender identity of transgender persons*” (CoE, 2017).

The balance of security and safety with gender recognition is therefore crucial. Both the *Mandela Rules* (Rule 11) and EPR (Rule 18.9) contains some exceptions (based on consent or best interest) and state women prisoners must be detained in separate accommodation to men. This separation is underpinned by normative binarism and conditions of perceived vulnerabilities of the sexes (Dias-Vieira and Ciuffoletti, 2014). This has implications for rights assurance of a range of (trans) gendered placement needs and rights in prison (cisgender, pre-operative, non-operative and post-operative transgender women and men, gender non-conforming, intersex). The Special Rapporteur on Torture has been at the forefront in drawing attention to human rights abuses, with concern centring on “*the absence of appropriate means of identification, registration and detention that leads in some cases to transgender women being placed in male-only prisons, where they are exposed to a high risk of rape, often with the complicity of prison personnel*” UN Human Rights Council, 2015; UN Human Rights Office of the High Commissioner, 2016; Report of the Special Rapporteur on Torture, 2016). The UN Committee on Torture (2016) specifically states that prison authorities must identify risks and those who are vulnerable, protect them by not leaving them isolated and operationalise necessary measures.

Although segregation may be necessary for safety, transgender status does not justify limitations on access to recreation, legal or medical assistance (Special Rapporteur on Torture, 2011). Rule 57 of the *Mandela Rules* (2015) states that “*the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a*

situation”. The *Mandela Rules* contain further specific limitations (Rules 37,44-45), with Rule 45.2: stating “*The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.*” This is further reflected in the *Yogyakarta Principles* (5,7,10,18,27), and particularly Principle 9 which states that protective measures “*involve no greater restriction of their rights than is experienced by the general prison population*”. In Europe, lawful authorisation and reasonableness of segregation are outlined in article 6.1 ECHR, with an analogy drawn between segregation based on gender identity and segregation based on sexual identity, whereby segregation based on sexual identity has been ruled as unlawful and in breach of Article 3 (prohibition of inhuman and degrading treatment) and 14 ECHR (prohibition of discrimination) (see *X v Turkey*, ECtHR, 2012). In 2009 a UK court ruled that the refusal to move a pre-operative transgender prisoner from a men’s prison to a women’s prison was a violation of her human rights under the ECHR Article 8 (see *X v Turkey*, ECtHR, 2012; *R Bourgass v Secretary of State for Justice*, UKSC, 2015).

International human rights instruments mandate States to protect all prisoners, irrespective of SOGI and facilitate social reintegration (UNODC, 2009). Prison staff failures to uphold the rights of transgender prisoners have been deemed by US courts to violate the 8th Amendment, constituting “*cruel and unusual punishment*” (Alexander and Meshelemiah 2010). Protection from gender maltreatment and abuse by prison staff and other prisoners is mandated in ECHR (Articles 3, 14) (see *Sizarev v Ukraine*, ECtHR, 2013; *G.G. v. Turkey*, ECtHR, 2013). Whilst the deliberate disclosure of transgender status breaches ECHR article 8 (right to respect for private and family life), in the prison where there is risk of violence, this may also breach ECHR Article 3 (see *Bogdanova v Russia*, ECtHR, 2015).

Transgender prisoners are frequently denied access to gender affirming clothes and commodities, indicative of the struggle between discrimination and lack of acknowledgement, security and equality rights (UNDP, 2020). The *Mandela Rules* Rule 19 specifically requires that “*Such clothing shall in no manner be degrading or humiliating.*” (UN, 2015). Of note is whilst the EPR, Rule 81.3 recognises the need for staff training to support vulnerable prisoners such as women or refugees, it does not refer to transgender prisoners. In 2013, a UK court found no discrimination in refusing gender-affirming items such as a wig, tights and a prosthetic vagina to a transgender prisoner (see *R (Green) v*

Secretary of State for Justice, EWHC, 2013). In South Africa however, a transgender woman won her constitutional right to express her gender identity by wearing women's clothes, makeup and wearing her hair long in a male prison (see *September v Subramoney NO and Others*, ZAEQC, 2019). In the US, there have been positive developments in recent years. In 2018 a District court in Florida ruled that a transgender prisoner was permitted to gender affirm by wearing female clothing and accessing female items (see *Keohane v. Jones*, N.D. Fla, 2018). This is also evidenced in the recent case in December 2020 in a US District Court (see *Campbell v Kallas*, W.D. Wisc, 2020) which described that the prison in question facilitated an inmate access to continued hormone treatments, counselling and the wearing of some womens clothing, but with the judge denying additional requests for breast augmentation, voice therapy and electrolysis, as legal representation of the transgender inmate failed to provide evidence that these medical interventions were specifically required to treat the inmate's gender dysphoria.

The right to the highest attainable standard of health of transgender prisoners falls within international human rights treaties (ICESCR, article 12, ICCPR article 6 right to life, article 10 right to human treatment, ESC, article 11, CFR, article 11; CESC article 10; ACHR, article 16). It is universal and non-discriminatory. This right also spans environmental determinants of health in prisons, standards of healthcare, and rights to privacy and medical confidentiality. The ICCPR and ICESCR both state that prisoners have rights, even when they are deprived of liberty in custody. The ICCPR specifically provides that "*all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person.*" It spans the underlying determinants of health, as well as access to adequate healthcare and information. It is also defined within soft law instruments from international organisations and the jurisprudence of international human rights bodies (Lines, 2008). The principle of equal treatment enshrined in these instruments states that all positive steps be taken to eliminate discrimination and risks faced by transgender persons. Guiding principles impacting on the prisoners include the right to health, where like all persons, prisoners are entitled to enjoy the highest attainable standard of health and human treatment with equal right to services and medicines. Examples include all provisions included in the UDHR (*right to conditions "adequate for the health and well-being"*), ICESCR ("*right to the highest attainable standard of physical and mental health*") and several others ICCPR (articles 5, 9, 10, 26), UNCAT, CEDAW (Article 3); United Nations Basic Principles for

the Treatment of Prisoners (Principle 5), the *Nelson Mandela Rules* (Rules 2, 5, 7, 19, 37, 38, 43-45), and that the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, EPR (Rules 2, 5) (UNDP, 2020). These are further supported by the *Yogyakarta Principles* mandating the right to treatment with gender identity integral to dignity and humanity, and must not be the basis of discrimination or abuse while in detention (Principle 5,7,9,10,18,27,32), and the ECHR (articles 3, 6, 14). The UN Principles of Medical Ethics state that all health personnel working with prisoners “*have a duty to provide them with ... treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained*”. The *Mandela Rules* and the *Bangkok Rules* enshrine principles of confidentiality of medical and gender-related personal information for prisoners. The *Nelson Mandela Rules* further stipulates “*Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.*” Both the *Nelson Mandela Rules* and the *Bangkok Rules* enshrine principles of confidentiality of medical and gender-related personal information for prisoners. According to the Yogyakarta Principles Principle 17 specifically recommends States to “*facilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support*”.

There is international consensus that prisoners are entitled to an equivalent standard of healthcare to that available in their community. In Europe, the ECHR contains no explicit right to health, with the right to medical care in prisons guaranteed under the right to life. Most ECtHR case law on prison health issues falls under Art 3 (prohibition of inhuman and degrading treatment) of the ECHR, which is an important tool for advocating for the rights of transgender prisoners. It clearly lays out the obligations of states to take proactive measures to prevent inhumane or degrading treatment to those deprived of their liberty (see Lines, 2007 who has discussed such positive obligations to “*ensure that a person is detained under conditions which are compatible with respect for his human dignity*” and to argue the case for States to provide needle exchange in prisons). According to the case of *Kudla v. Poland* (ECtHR, 2000) which concerned a prisoners need for urgent psychiatric treatment, Article 3 obligates the state to ensure a prisoner’s “*health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance.*” However, the ECtHR has also stated

that “*lack of medical assistance in circumstances where such assistance was not needed cannot, of itself, amount to a violation of Article 3*” (prohibition of inhumane or degrading treatment). Of note is that the 2020 CoE Guide on ECHR case-law regarding prisoner rights does not refer to transgender people (ECtHR, 2020). The CoE Anti-Torture Committee (2015) has made recommendations regarding a case in Austria that “*authorities take the necessary steps to ensure that transgender persons in prisons (and, where appropriate, in other closed institutions) have access to assessment and treatment of their gender identity issue and, if they so wish, to the existing legal procedures of gender reassignment. Further, policies to combat discrimination and exclusion faced by transgender persons in closed institutions should be drawn up and implemented*”. In terms of right to adequate treatment (including continued hormone treatment), referral to treatment and denial of treatment posing threat to prisoner health, there have been several cases in Europe exploring right to GRS (see *D.Ç v Turkey* , ECtHR, 2012; *Bogdanova v Russia*, ECtHR, 2015). Further complications however exist in the form of right to medical treatment in determining whether treatment is medically necessary or falls under right to private life, dignity and gender self-identification, and the subsequent state funding of such treatment (see *Van Kück v Germany*, ECtHR, 2003).

Failure to provide transgender healthcare in prisons puts transgender prisoners at risk, causes significant mental anguish and raises serious human rights concerns. Elsewhere, the right to access treatment has been upheld in Canada (Canadian Human Rights Tribunal (2001). There have been interesting developments in US case law around rights to medical care of transgender prisoners. Some US courts have ruled that hormone therapy is a necessity for transgender prisoners (*Kosilek v. Maloney*, 221 F. Supp. 2d 156 (D. Mass. 2002), have permitted GRS for transgender prisoners (*Quine v. Beard et al.* , N.D. Cal. 2017) and in 2020 have ruled that court decisions “*elevate innovative and evolving medical standards to be the constitutional threshold for prison medical care*”. (*Edmo v. Corizon Inc.*, 9th Circuit Court, 2020). As previously referred to, the case of *Campbell v Kallas* (December 2020) in the US has ruled that (despite the prison facilitating an inmate access to continued hormone treatments, counselling and the wearing of some women’s clothing), the denial of the opportunity to have GRS, was deemed to violate her constitutional rights (8th Amendment rights against ‘*cruel and unusual punishment*’).

Conclusion

This *Viewpoint* highlights the dearth of knowledge exploring human rights discourses and concerns related to the phenomenon of incarcerated transgender persons. It uniquely focusses on European and domestic law and illustrates the inherent tensions between human rights, SOGI rights and security considerations regarding transgender issues in prisons. It underscores the relationship between rule of law, recognition of gender identity and medical ethics as central to upholding of gender affirmation itself, and the imperatives for related medical care needs in prison. Court discretion continues regarding such rights assurance in prisons; for sexual minorities, and particularly for transgender people. Rights assurances in this sense centre on the principles of equality, dignity, freedom of expression, dignified detention and the prohibition of inhumane treatment or punishment, and the equivalence of and right to appropriate medical care (both hormone and surgical).

In 2019, the UN underscored the need for further evidence based prison reform, tackling, via judicial and penal measures, the invisible nature of transgender prisoners (UN Human Rights Council, 2017). Data on the issue of and experience of transgender prisoners and related case law remains scant. The UN Independent Expert on protection against violence and discrimination based on SOGI, *Victor-Madrigal-Borloz* has stated 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.”*

Globally, the UNDP has published a series of good practices in the management of transgender prisoners which centre on self-identification without the need for medical or psychological examination or confirmation, irrespective of legal recognition, legal documents and surgical status, gender neutral access to clothes and commodities, and access to a full range of appropriate medical care whilst detained (UNDP, 2020). Whole prison approaches to tackling discrimination and supporting transgender people are further warranted to consider the complexities of non-binary classification and capacity build prison staff, alongside continued lobbying to ensure States human rights assurances of incarcerated transgender people are upheld (Brömdal et al., 2019; Van Hout et al., 2020).

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