

Anniversary of the Maputo Protocol: Crossing the Rubicon toward expansion of rights assurances of (invisible) women deprived of their liberty in African prisons.

Professor Marie Claire Van Hout, Faculty of Health, Liverpool John Moores University, Liverpool, L2 2QP, United Kingdom. <https://orcid.org/0000-0002-0018-4060>

Jakkie Wessels, Limpopo Regional Division, Magistrate Court, Office of the Regional Court President, corner Bodenstein and Landdros Marais street, Polokwane, Limpopo, South Africa. <https://orcid.org/0000-0003-0843-157X>

On any given day, over one million people are deprived of their liberty [in African prisons](#). Despite the decrease in levels of [unsentenced prisoners](#) (45% in 2000 to 34% in 2019), many [prison systems operate over 200% capacity](#). The Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, and the Committee for the Prevention of Torture in Africa continue to document [substantial difficulties in achieving minimum standards of care](#). Detention systems are generally [under-resourced with poor infrastructure and insufficient human and financial resources](#).

In Africa the female prison population has increased by [55.5% since 2000](#). They [are overwhelmingly black, poor, uneducated, with frequent histories of trauma, victimisation and exposure to violence, and very often mothers](#). Low awareness of their rights and protracted unequal access to justice is common. [Detention of women](#) occurs for [various criminal offences](#); e.g. non-violent crimes of [poverty](#) (substance use, sex work, petty crime, brewing alcohol, vagrancy); [violent crime](#); gendered offences (e.g. abortion, adultery); witchcraft; and [at times are detained in the place of their husbands](#).

Human rights [violations](#) of [women living in African prisons continue](#). Due to the dominant male prison population, prison policies, systems and provisions are [ill-equipped](#) to support their [unique gendered needs](#). Female prisoners [continue to endure](#) endemic [overcrowding](#), [inadequate](#) provision of food and [menstrual hygiene products](#), inadequate access to clean water, hygiene and sanitation, exposure to violence and inadequate or denial of access to sexual and reproductive healthcare (including transport to hospital to give birth) and paediatric care for their children. There is very little attention paid to the plight of the small number of [women on death row in Africa](#).

Their situation has not gone unnoticed by the various United Nations (UN) Treaty Bodies which document their explicit concern regarding congested and health-threatening environmental conditions of detention especially for pregnant or nursing mothers in [Burkina Faso](#), [Senegal](#), [Niger](#), [Rwanda](#), [Lesotho](#) and [Zimbabwe](#). The co-detention of juveniles with

adults is documented in [Ethiopia](#). Many Treaty Bodies document physical and sexual violence; e.g. due to non-sex segregated prisons, or perpetrated by fellow inmates and prison guards (e.g. in [Benin](#), [Burundi](#), [Eritrea](#), [Ethiopia](#), [Gambia](#), [Guinea](#), [Mali](#), [Mozambique](#), [Nigeria](#), [South Sudan](#), [Zambia](#) and [Zimbabwe](#)). In 2019, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) documented the harassment of lesbian and transgender women in [Mozambique](#) prisons. Of further alarm is the continued use of death penalty for women in [South Sudan](#) in direct contravention of the 2013 moratorium and in the absence of fair trial guarantees. Unequal access of women to treatment for human immune deficiency virus (HIV) in prisons in [Botswana](#) and [Ethiopia](#) is reported by CEDAW and the Committee against Torture.

This year marks the 20 year anniversary of the [Maputo Protocol](#) (hereafter '*the Protocol*'). At the time of writing, [universal continental ratification has not yet been achieved](#). As a living document it has contributed to a substantive shift in the [gender equality rights landscape in Africa](#). Authentic change will be achieved when all women in Africa, no matter their circumstance are respected as human beings with their own dignity, and not limited to their position as legal persons with a legal personality.

Operationalisation of the Protocol at [continental](#), regional and domestic levels can go further in assuring the rights of the minority female prison population. States translating and operationalising the Protocol into domestic laws and programmes have the unique (and urgent) opportunity to extend its application cognisant of existing rights violations and protection measures warranted for *all* women in prison, moving beyond the single mention of women in detention in *Article XXIV* ('*special protection of women in distress*'), the gender neutral confines of the [African Charter on Human and Peoples' Rights](#) (*Articles* 5, 16); the [various African resolutions](#) aligned to [UN norms and standards](#), and the scant reference to women living in prisons provided in the (respective) [Kampala Declaration](#) and [Robben Island guidelines](#); and [cis-normative prison frameworks](#). [Pregnant women or those with young children indirectly receive protections](#) via *Article 30* of the [African Charter on the Rights and Welfare of the Child](#).

States are obliged to ensure that women are equal before the law and are protected from discrimination at all stages of the criminal justice process. The detention (and excessive detention pending trial) of women for less serious non-violent crimes and in conditions which violate their right to dignity, respect and health is inconsistent with equal dignified treatment of women. Understanding the characteristics of women in conflict with the law so that considerate [gender sensitive responses](#) spanning root causes, structural inequalities, gender

discrimination and risk trajectories can be implemented [is mandated](#). We are encouraged to see the [African Commission on Human and Peoples' Rights resolution](#) (15 June 2023) on conducting a study on prisons and conditions of detention in Africa; which explicitly refers to the impact of imprisonment on women and their children, and the need to better understand and recognise gendered pathways to imprisonment.

Whilst application of non-custodial measures for women in conflict with the law as [underscored by the](#) UN norms and standards continue to be ill-applied in Africa, and processes in deciding best interests of the child in whether to separate from their mother or live in prison environments are [complex](#), there are positive developments to illustrate. Various release schemes for women jailed for having abortions have been enacted (e.g. [Rwanda](#)). The first [Female Open Prison](#) in Africa was opened in 2021 in Marondera, [Zimbabwe](#). The facility operates with minimal security and provides women with a suite of rehabilitation and reintegration activities. Eligible women can wear their own clothes and have the flexibility to nurse their children and visit family.

In terms of standards of care in prisons, at the regional level, there is progress with the 2008 (and its 2016 successor) Southern African Development Community ([SADC protocol on gender and development](#)) committing regional Member States to ensure provision of adequate nutrition, hygiene and sanitary facilities for women in prisons (*Article 26*). In 2022 a gender responsive female correctional facility was opened in [South Africa](#), with explicit focus on “*women’s special needs, including specific health care needs and guarantee a gender sensitive system of care*”.

The 2021 [SADC Model Law on Gender Based Violence \(GBV\)](#) is also an important step towards establishing domestic GBV laws that effectively protect *all* women against violence, including transwomen and those living in prison confines. There has also been substantial progress around [progressive death penalty abolition](#) (e.g. Kenya, Central African Republic, the Comoros, the Republic of Congo, South Africa, Burkina Faso, Gambia, Zimbabwe, Nigeria, Sierra Leone).

The geo-political landscape in Africa has changed irrevocably since the inception of the Protocol. Vulnerable groups living in poverty and in prisons are uniquely vulnerable to the myriad of consequences of [climate change](#). [Food insecure women](#) are at greater risk of severe hunger and malnutrition, with consequent impact on HIV rates, exposure to sexual violence, women’s health and ultimately their contact with the justice system. This incurs potential threats to the continental (and global) targets to end [HIV/AIDS by 2030](#). Of key importance here is that the Protocol as the first legally binding human rights treaty to make explicit

reference to [HIV/AIDS](#) can therefore play an important role in supporting [responses to HIV](#) among women (and [transwomen](#)) living in [African prisons](#).

The Protocol remains the [primary instrument when monitoring](#) the situation of women deprived of their liberty. However, it is only the Committee for the Prevention of Torture and one Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa that monitors 53 African states. It should be noted that whilst there are historical and recent challenges regarding prison conditions under right to life and the prohibition of cruel, inhuman or degrading treatment at the African Commission and African Court of Human and People’s Rights, [none are from female applicants](#). The monitoring by human rights commissions and national preventive mechanisms, and assurance of substantive gender equality rights and rights to dignity and respect of **all women** (see *Article 1(k)*), [including transwomen](#)) deprived of their liberty in Africa must be strengthened.

Leave no-one behind.

.....