

**Submission to the**

**United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

**Responses to the Special Rapporteur’s call for input concerning her forthcoming report to the 50th session of the Human Rights Council on the issue of violence and its impacts on the right to health**

**Submitted 18 January 2022**

**About the Submitting Organization**

DIGNITY is an independent human rights and development organization. Our vision is a world free of torture and other cruel, inhuman, or degrading treatment.

Founded in 1982, DIGNITY is one of the world’s first anti-torture NGOs and specialized treatment centres for torture survivors. For 40 years, DIGNITY has been a leading civil society force in the global fight against torture and today our programming spans the health, legal and political sectors.

DIGNITY is headquartered in Copenhagen, Denmark, has country offices in Jordan and Tunisia, and currently employs around 140 staff globally. We have active partnerships with more than 30 local and international NGOs and research institutions around the world.

DIGNITY operates in more than 20 countries in Africa, Middle East, Asia, Eastern Europe, and Central America, where we work in close partnerships with human rights defenders, civil society organizations and, where possible, government authorities. DIGNITY is a member of the World Health Organization’s Violence Prevention Alliance and the UN Sub-Committee on Prevention of Torture.

**Submitting Organization Contact Details**

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| Type of Stakeholder (please select one) | Member State  Observer State  Other (please specify) |
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# Introduction

This report aims to provide the Special Rapporteur with information concerning violence and its impacts on the right to health in oft-overlooked settings: situations where people are deprived of their liberty—prisons, police departments, immigration detention centres, juvenile detention facilities, psychiatric and prison hospitals, etc. In these contexts, the state and its agents are commonly both responsible for the act of violence, as well as the subsequent and/or simultaneous violation of the right to health.

All over the world the multiple and intersecting layers of discrimination faced by marginalized groups are mirrored and often exacerbated in situations of state custody. Women and lesbian, gay, bisexual, trans and gender diverse persons face specific risks of torture and ill-treatment when they come in contact with criminal justice systems and other custodial contexts.[[1]](#footnote-1)

Historically, the torture and ill-treatment framework “evolved largely in response to practices and situations that disproportionately affected men.”[[2]](#footnote-2) Simultaneously, conditions of imprisonment, detention, custody and other contexts of state control have likewise been designed narrowly around men and masculine perspectives—they are typically masculinized, heteronormative settings that serve women, gender and sexual minorities exceptionally poorly. Moreover, persons who do not conform to traditional gender norms are often policed and punished more harshly in state custody than those who adhere more closely to societal gender expectations.[[3]](#footnote-3) Likewise, traditional norms around masculinity and femininity still operate as key modes of discipline, power and regulation within custodial settings.[[4]](#footnote-4) These realities have a very potent effect on the realization, or lack thereof, of the right to health.

Accordingly, DIGNITY urges the Special Rapporteur to take up these issues in her forthcoming report on violence and the right to health. The following information is respectfully submitted to facilitate the Special Rapporteur’s investigation into the gaps in prevention, protection, access to justice and remedies for violence committed in places of detention and conditions of deprived liberty.

The sources drawn on in drafting this submission come from in-house research published in peer-reviewed journals, publications from experts and expert bodies on violence and health in custodial environments, and reports of UN entities including the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Office of the High Commissioner of Human Rights. Country examples are drawn from contexts in which DIGNITY works and/or has partners, including Europe, the Middle East and North Africa, east Africa, and southeast Asia.

# Answers to Select Questions

1. Please describe, share data and information on the characteristics, number of cases, and the profile of victims and perpetrators in your country/ies or region(s) regarding:
   1. *gender based violence against women*

(Custodial settings are unique in their capacity to inflict institutional violence, the specific gender dimensions of which are explored in the response to question 3 below.)

With respect to custody in criminal justice settings, a majority of female detainees worldwide are first-time offenders suspected of or charged with non-violent crimes, but are nevertheless often automatically sent to pretrial detention.[[5]](#footnote-5) In many contexts, the “crimes” women are accused of committing are highly gendered moral crimes, such as adultery and extramarital relationships, witchcraft and sorcery, and seeking or receiving reproductive health services.[[6]](#footnote-6) Such laws significantly contribute to overcrowding, which has a negative impact on detainees’ right to health and gives rise to ill-treatment or torture.[[7]](#footnote-7)

Women in pretrial detention facilities tend not to have access to specialized health care services[[8]](#footnote-8) and are at particular risk of torture and ill-treatment because sexual abuse and other forms of gender-based violence may be used as a means of coercion and to extract confessions.[[9]](#footnote-9)

The risk of sexual and other forms of violence can arise during transfers to police stations, courts or prisons, and particularly where male and female prisoners are not separated or when male staff transport female prisoners.[[10]](#footnote-10) In prison, women and girls are at particular risk of gender-based violence by male prisoners and prison staff, including rape, insults, humiliation and unnecessary invasive body searches.[[11]](#footnote-11)

* 1. ~~gender based violence and other forms of violence against children.~~
  2. *gender based violence against LGBTI or other persons based on real or imputed sexual orientation, sex characteristics, and gender identity.*

(Custodial settings are unique in their capacity to inflict institutional violence, the specific gender dimensions of which are explored in the response to question 3 below.)

Lesbian, gay, bisexual and trans and gender diverse persons who are deprived of their liberty are at particular risk of torture and ill-treatment[[12]](#footnote-12)—including in the form of placement in solitary confinement or administrative segregation for their own “protection,”[[13]](#footnote-13) humiliating and invasive body searches particularly for transgender detainees,[[14]](#footnote-14) and where homosexuality is criminalized, men suspected of same-sex conduct are subject to non-consensual anal examinations.[[15]](#footnote-15)

* 1. ~~violence against persons with disabilities, including GBV.~~
  2. gender based violence against men

Sexual and gender-based violence against men in custodial settings is pervasive, in particular in prison settings where sexual violence is committed by prison staff and other inmates. Of particular concern is inmate-perpetrated sexual violence against other inmates, which is typically horrifically brutal, and committed with the awareness of prison officials. Take for example the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment’s (CPT) reports of its visits to prisons in Romania,[[16]](#footnote-16) Czechia,[[17]](#footnote-17) and Greece[[18]](#footnote-18) where the Committee recorded numerous instances of extremely violent rape and sexual assaults against inmates at the hands of other inmates, often facilitated as a mode of punishment by prison authorities.

* 1. ~~conflict gender based violence, including sexual violence~~
  2. ~~Please share analysis and available evidence on the impact of COVID on the above~~

1. Please describe whether the legal framework prohibits and sanctions these forms of violence and the definitions and forms of violence included in the legal system. Please explain redress options for survivors of violence, (the pathway they go through if they decide to file a complaint), levels of impunity and if access to comprehensive physical and mental care for GBV-survivors is recognized as a form of reparation.

The UN Convention against Torture, the International Covenant on Civil and Political Rights and numerous regional human rights instruments not only prohibit torture,[[19]](#footnote-19) but oblige states to prevent public authorities from “directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in any acts of torture” and other cruel, inhuman, or degrading treatment or punishment.[[20]](#footnote-20)

It is well established that rape and other forms of sexual violence can amount to torture and ill-treatment.[[21]](#footnote-21) In addition, women and lesbian, gay, bisexual, trans and gender diverse persons face specific forms of institutional or structural violence in custodial settings, all of which can amount to torture or ill-treatment and are therefore prohibited by international law.

For example, in states where homosexuality is criminalized, “men suspected of same-sex conduct are subject to non-consensual anal examinations intended to obtain physical evidence of homosexuality, a practice that is medically worthless.”[[22]](#footnote-22) The UN Working Group on Arbitrary Detention has stated that “forced anal examinations contravene the prohibition of torture and other cruel, inhuman and degrading treatment, whether… they are employed with a purpose to punish, to coerce a confession, or to further discrimination.”[[23]](#footnote-23) Indeed, since 2015, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has called for a ban on the practice.[[24]](#footnote-24)

Additionally, lesbian, gay, bisexual, trans and gender diverse persons are sometimes compelled into so-called “conversion therapy.” In many cases such practices are either performed pursuant to an order of public officials, judges or the police, or performed by medical personnel in state hospitals, public clinics, schools, and juvenile detention centres. Regarding this practice, the UN Special Rapporteur on Torture has observed:

Given that ‘conversion therapy’ can inflict severe pain or suffering, given also the absence both of a medical justification and of free and informed consent, and that it is rooted in discrimination based on sexual orientation or gender identity or expression, such practices can amount to torture or…to other cruel, inhuman or degrading treatment or punishment.[[25]](#footnote-25)

Third, virginity examinations are still practiced in many countries, often forcibly, including in detention, on women who allege rape or are accused of prostitution and as part of public or social policies to control sexuality.[[26]](#footnote-26) The World Health Organization,[[27]](#footnote-27) the UN Special Rapporteur on Torture,[[28]](#footnote-28) and the UN Special Rapporteur on Violence Against Women[[29]](#footnote-29) all consider virginity examinations to be a form of sexual violence.

Finally, legal frameworks in many domestic contexts actually put women and lesbian, gay, bisexual, trans and gender diverse persons at more risk of custodial violence by the state. In many jurisdictions, the criminalization of abortion, “moral crimes” like adultery and extramarital relationships, witchcraft and sorcery, laws criminalizing consensual same-sex relations between adults, prohibitions on cross-dressing or “imitating the opposite sex”, and police identity control laws are offences that are aimed at or that solely and disproportionately affect women, lesbian, gay, bisexual, trans and gender diverse persons.[[30]](#footnote-30)

1. Please share examples of the types of structural and institutional violence with origins within the State, (perpetrated or condoned by the State) or perpetrated by those not representing or affiliated to the state in your country/ies of region, and who is affected. In particular, describe structural/institutional violence in medical settings against women and girls, LGBTI persons and persons with disabilities or any other individuals or groups relevant in your country/ies or regions.

*Custodial environments systemically fail to provide adequate and gendered health care*

States regularly fail to tailor health care in custodial settings to detainees’ gendered needs.[[31]](#footnote-31) Of particular concern are: a lack of specialist care; lack access to mental health, addiction, harm-reduction and suicide prevention programmes; lack of private spaces for examinations; failures in diagnosis; medical neglect; and reportedly higher rates of disease among female detainees.[[32]](#footnote-32) Lesbian, gay, bisexual, trans and gender diverse persons face additional risks of being denied services, verbal abuse, public humiliation, psychiatric evaluations, and forced procedures[[33]](#footnote-33) that procedures are not medically necessary and can amount to torture and ill-treatment.[[34]](#footnote-34)

*Custodial environments are venues for institutional gender-based violence*

There are myriad forms of institutional violence occurring in custodial environments, including policies of neglect, sterilization, and force feeding. This submission will focus on three pervasive types of such violence that have particularly gendered elements: forced anal examinations, so-called “conversion therapy”, and virginity exams.

Anal examinations are forcibly conducted in many countries where consensual anal intercourse is a criminal act.[[35]](#footnote-35) Usually initiated at the request of law enforcement officials, prosecutors, or courts and conducted forcefully, there is no scientific validity to these examinations.[[36]](#footnote-36) The overall experience of being detained, charged with a crime, forced to undergo a painful, humiliating examination, and facing the possibility of being incarcerated for one’s private, consensual sexual conduct is profoundly discriminatory and can lead to depression, anxiety disorders, substance abuse, suicidal thoughts and attempts, and may also contribute to the symptoms of post-traumatic stress disorder.[[37]](#footnote-37)

So-called conversion therapy is undertaken both in contexts under state control, e.g., hospitals, schools, and juvenile detention facilities, as well as in private settings.[[38]](#footnote-38) In some countries, it is imposed by the order of public officials, judges, or the police.[[39]](#footnote-39) The practice is ineffective, inherently repressive, and not supported by empirical evidence.[[40]](#footnote-40) Many “conversion therapy” practices bear similarity to acts that constitute torture or other cruel, inhuman, or degrading treatment or punishment, including beatings, rape, forced nudity, isolation, confinement, deprivation of food, forced medication, verbal abuse, humiliation, and electrocution.[[41]](#footnote-41)

Virginity examinations are practiced, often forcibly and in detention places, on women who allege rape or are accused of prostitution.[[42]](#footnote-42) Virginity examinations are medically unreliable and have no clinical value.[[43]](#footnote-43) Forcibly conducting virginity examinations on women violates their bodily autonomy and sexual decision-making.[[44]](#footnote-44) As such, these examinations cause significant mental pain and suffering in almost all instances.[[45]](#footnote-45) When undertaken in detention settings, they can be particularly traumatic because of the state’s exploitation of the detainee’s vulnerability and weakened resistance.[[46]](#footnote-46)

1. ~~Please also share information on the impact of criminalization of sex work, same sex relations, transgender persons, abortion, drug abuse, harmful practices in obstetric care, female genital mutilation on the violence experienced by the affected individuals and their enjoyment of the right to health.~~
2. ~~Please share information on the health and other type of responses provided by the State and/or other actors in your country/ies or regions in focus to survivors of each/some of the aforementioned forms of violence. Please assess what works well and not so well, and whether COVID-19 impacted the response and how.~~
3. ~~Please specify the budget allocated in your country/ies in focus, to health related response to survivors of all/some forms of violence mentioned above. Please indicate the percentage of the national budget devoted to this; the percentage of the international aid provided or received for this. Please explain the impact of Covid 19 to the funding of responses to all/some forms of violence in your State/institution.~~
4. Please describe the needs of survivors of the abovementioned forms of violence as identified by your State/institution. Please share survivor-self identified needs and those of their families, with a focus on health emergency and long-term needs.

The primary needs of survivors of torture or other cruel, inhuman or degrading treatment or punishment that takes the form of gender-based violence often consist of immediate medical attention, mental health and psychosocial services, and protection from further harm and immediate physical safety, shelter, and resources to maintain social relationships and livelihoods.[[47]](#footnote-47)

1. Please share examples of good practices and examples of comprehensive health responses to survivors of violence and indicate efficient multi-sectorial efforts at the community, national, regional and international levels by State or non-State actors.

Community health workers are crucial in addressing the medical needs of survivors of torture and other cruel, inhuman or degrading treatment or punishment in the form of gender-based violence. Community-based organizations and services providers tend to be better trusted by survivors and are thus able to identify victims in need of attention who would not report violations. Examples of locally-based organizations providing essential services to communities in need include: the Institute for Family Health (Jordan),[[48]](#footnote-48) NEBRAS (Tunisia),[[49]](#footnote-49) and Restart Center for Rehabiliation of Victims of Violence and Torture (Lebanon).[[50]](#footnote-50)

1. Please describe State and other actors initiatives and measures to prevent these forms of violence, specific budget allocated to prevention, and good practices in this regard.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) are the most comprehensive effort to account for the treatment and conditions of women in prison.[[51]](#footnote-51) The Rules cover a wide range of issues, including women’s specific hygiene needs, gender-specific healthcare including mental health care services and sexual and reproductive healthcare, gender-based training for prison staff, and conditions necessary to promote opportunities for women to spend time with their children.[[52]](#footnote-52) The Rules also address the unique needs of minority, indigenous and foreign national women in prison.[[53]](#footnote-53) Notably however, the Rules fail to address the specific needs of transgender women. Filling this gap, the Yogyakarta Principles incorporate recommendations specific to the treatment of transgender people in prison.[[54]](#footnote-54)

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53. Rules 53–55; O’Connell, C., Aizpurua, E. & Rogan, M. The European committee for the prevention of torture and the gendered experience of imprisonment. *Crime Law Soc Change* 75**,**445–468, 449 (2021). [↑](#footnote-ref-53)
54. Recommendations 9 and 10; O’Connell, C., Aizpurua, E. & Rogan, M. The European committee for the prevention of torture and the gendered experience of imprisonment. *Crime Law Soc Change* 75**,**445–468, 449 (2021). [↑](#footnote-ref-54)