

COVID-19: PRISONS AND DETENTION IN SOUTHERN AFRICA



WHO Recommendations on COVID19 and Prisoners.

1. Release of prisoners to address overcrowding (2020)
2. Prioritisation of people living and working in detention facilities and incarcerated people in Vaccine distribution (14 September 2020, WHO SAGE Roadmap)

COUNTRY	PRISON POPULATION BEFORE RELEASE	TYPE OF RELEASE	PRISONERS RELEASED	DATE
Angola	26000	Pre-trial detainees	2997	20.05.20
Botswana	4343	Pardons	149	17.04.20
Democratic Republic Of Congo	At 2015	Pre-trial detainees & temp. releases	2500	23.04.20
Mozambique	19874 at 31.12.19	Amnesties	5032	6.04 to 4.06.20
South Africa	147922 at 24.6.20	Conditional releases	19000	10.06.20
Zambia	22 823 at 31.12.19	Pardons	2528	22.05.20
Zimbabwe	22 000 at 31.3.19	Pardons	4208	17.04.21

Source: World Prison Brief Data-Africa, 2021

SADC Response to COVID19

Early release was prioritised to decongest prisons to manage the spread of COVID-19, the African Commission endorsed this recommendation. (African Commission on Human and Peoples' Rights, 2020)

In Zimbabwe contact with the outside world has been restricted through limitations on visits from relatives and legal representatives. (Bulawayo24 News, 2020) In Eswatini, South Africa, Madagascar, Mozambique countries access to prisons by external visitors was prohibited.

In Zambia visits were prohibited but visitors could leave items for prisons such as food or clothing. (Global Press Journal, 2020)

People in detention are more vulnerable to COVID-19 due to exposure to risks such as poor hygiene and weak immune defence due to stress, poor nutrition, or prevalence of coexisting diseases, such as blood borne viruses, tuberculosis and drug use disorders. (WHO, 2021)

Vaccine Distribution in Southern Africa

The government of South Africa is one of the first in the SADC region to explicitly incorporate prison populations among the priority groups in its vaccination plan. (Department of Health South Africa, 2021)

As of late February 2021, Angola had published its vaccine rollout plan however there was no mention of vaccination extending to prisons. (Agência Angola Press, 2021)

The government of Lesotho identified health workers as the first priority group and announced that it would decide on other priority groups in February. (Government of Lesotho, 2021)

- In February 2021 Tanzania and Madagascar had indicated that it would not secure vaccines its citizens. (Kalebi, 2021) However, in April 2021 after the appointment of the new President, an Advisory Committee was setup to advise and make recommendations to the Government and as of May 2021 the Committee recommended that the President initiate steps towards getting citizens vaccinated. (Africa News, 2021)
- SADC has failed to press its member states to public their vaccination roll-out plans and strategies. (IOL, 2021)

Applicable Regional and International Standards

SADC Standard Minimum Guidelines for the Treatment and Management of Detainees by the Southern African Development Community Lawyers Association (2014).

These Guidelines aim to apply to the management of detainees in pre-trial detention and those serving sentences following a legally recognised trial through a national court system of a SADC country. These Guidelines have not been revised or amended during the COVID-19 pandemic.

Southern African Development Community (SADC) Health Protocol requires Southern African governments to cooperate in addressing health problems and challenges facing them through “effective regional collaboration and mutual support”. The SADC’s founding treaty sets **combating deadly and incommunicable diseases** as one of its founding objectives.

African Charter on Human and Peoples’ Rights (ACHPR)

Article 5 of the African Charter on Human and Peoples’ Rights (1981) provides the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

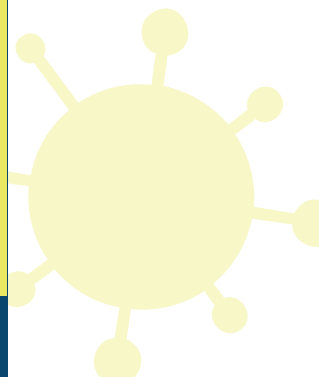
Robben Island Guidelines

The Robben Island Guidelines (2003), aim to provide a regional instrument for the prevention of torture and cruel, inhuman or degrading treatment in Africa. The Guidelines provide two types of basic safeguards for people deprived of their liberty: general procedural safeguards and specific safeguards for pre-trial detention.

United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (2016).

The Nelson Mandela Rules (2015) set out the following requirements for prisons in terms of sanitation and hygiene.

“We recommend the SADC Committee of Ministers of Health to establish a strong regional strategy to urgently acquire the vaccine for distribution to our citizens setting priorities in terms of level of risk.” (SADC Chair President F. Nyusi, 2020)



The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (also known as the Bangkok Rules) (2010). This is a set of 70 that focus on the treatment of female offenders and prisoners. It addresses issues relevant to women's experience of the criminal justice system such as social relations and after-care, safety and security during searches, healthcare services, as well as the specific needs of pregnant women, breastfeeding mothers and women with dependent children

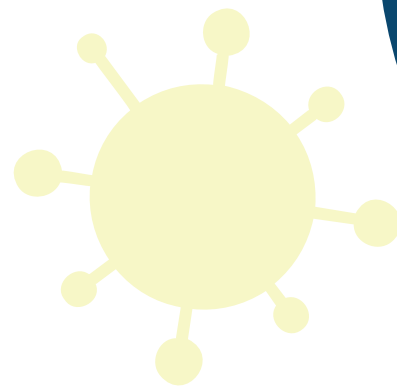
United Nations Human Rights Committee

The UN Human Rights Committee has emphasized that “treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule”, which “as a minimum, cannot be dependent on the material resources available in the state party”. (General Comment 21, para. 4.)

International Covenant on Civil and Political Rights (1966); The right to be free from torture or other cruel, inhuman or degrading treatment or punishment, under **article 7** of *International Covenant on Civil and Political Rights (1966)*; **articles 1, 2 and 16** of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* (1984);

Article 12(2)(c) of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* (1966) guarantees the right to prevention, treatment and control of diseases.

In its **General Comment 14** on the right to health, the *Committee on Economic, Social and Cultural Rights* (2000, para. 16) has clarified that this requires states to make individual and joint efforts to “make available relevant technologies, using and improving epidemiological surveillance and data collection on a disaggregated basis, the implementation or enhancement of immunization programmes and other strategies of infectious disease control.”



African States are reminded to respect the rights of persons deprived of their liberty in accordance with Article 6 of the African Charter on Human and Peoples' Rights while adhering and complying with the WHO's Interim Guidelines on the Preparation, Prevention and Control of COVID-19 for prisons and other places of detention. (African Commission on Human and Peoples' Rights)



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